

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF ILLINOIS
 3 WESTERN DIVISION

4	-----)	
	PATRICK PURSLEY,)	
5		
	Plaintiff,)	NO. 3:18-CV-50040
6		
	vs.)	ZOOM VIDEOCONFERENCE
7		DEPOSITION OF
	CITY OF ROCKFORD, et al.,)	ROGER A. CLARK
8		
	Defendants.)	
9	-----)	

10

11 Deposition of Roger A. Clark taken
 12 via Zoom videoconference on behalf of Jim Bowman,
 13 Ron Gallardo, John Genens, Jeff Houde,
 14 Sam Pobjecky, Mark Schmidt and Greg Hanson,
 15 defendants, in the above-entitled action on the
 16 8th day of October, 2021, commencing at
 17 10:01 a.m., as reported and transcribed by
 18 Andrea L. D'Agnolo, Certified Shorthand Reporter
 19 and Notary Public in and for the State of
 20 Illinois.

21

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23

24

1 A P P E A R A N C E S

2 ATTORNEYS LINDSAY HAGY,
3 ROSHNA BALA KEEN and RACHEL BRADY, of the firm
4 of Loevy & Loevy, 311 North Aberdeen Street,
Third Floor, Chicago, Illinois 60607, appeared via
Zoom videoconference on behalf of the plaintiff.

5 ATTORNEYS IFEANYI C. MOGBANA and
6 MATTHEW FLORES, of City of Rockford Department of
Law, 425 East State Street, Rockford, Illinois
61104, appeared via Zoom videoconference on behalf
7 of City of Rockford and Charlene Getty,
defendants.

8 ATTORNEY JOEL M. HUOTARI, of the firm
9 of WilliamsMcCarthy LLP, 120 West State Street,
Fourth Floor, P.O. Box 219, Rockford, Illinois
10 61105-0219, appeared via Zoom videoconference
on behalf of James Barton, Christine Bishop,
11 Bruce Scott, Doug Williams and Stephen Pirages,
defendants.

12 ATTORNEY MICHAEL F. IASPARRO, of the
13 firm of Hinshaw & Culbertson LLP, 100 Park Avenue,
P.O. Box 1389, Rockford, Illinois 61105-1389,
14 appeared via Zoom videoconference on behalf of
Jim Bowman, Ron Gallardo, John Genens, Jeff Houde,
15 Sam Pobjecky, Mark Schmidt and Greg Hanson,
defendants.

16 ATTORNEY ROBERT C. POTTINGER,
17 of the firm of Barrick, Switzer, Long,
Balsley & Van Evera, LLP, 6833 Stalter Drive,
18 Rockford, Illinois 61108, appeared via Zoom
videoconference on behalf of Estate of
19 Howard Forrester, Estate of Gary Reffett and
Estate of David Ekedahl, defendants.

20 ATTORNEY SUNIL BHAVE, of the Illinois
21 Attorney General's Office, 100 West Randolph
Street, 13th Floor, Chicago, Illinois 60601,
22 appeared via Zoom videoconference on behalf of
Daniel Gunnell, Peter Striupaitis and Jack Welty,
23 defendants.

24

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1 P R O C E E D I N G S

2 ROGER A. CLARK,

3 having been first duly sworn via Zoom

4 videoconference, was examined and testified as

5 follows:

6 BY MR. IASPARRO:

7 Q. Morning, Mr. Clark. For the record would you

8 state your name.

9 A. Roger Alma Clark.

10 MR. IASPARRO: My name is

11 Michael Iasparro, Mr. Clark. I represent seven

12 of the retired Rockford police officers who are

13 named as defendants in the Patrick Pursley versus

14 City of Rockford, et al., case that we're here

15 about this morning.

16 You and I have never met; is that

17 accurate?

18 THE WITNESS: Yes.

19 MR. IASPARRO: Where are you physically

20 located this morning, Mr. Clark?

21 THE WITNESS: Santee, California, which

22 is right next to San Diego.

23 MR. IASPARRO: I understand from your

24 resume and from the 26(a)(2) expert report that

1 we've received that you've been deposed hundreds
2 of times; is that fair to say?

3 THE WITNESS: Yes.

4 MR. IASPARRO: Any reason that you will
5 not be able to testify truthfully, truthfully and
6 accurately this morning?

7 THE WITNESS: No.

8 BY MR. IASPARRO:

9 Q. Is it accurate to say, Mr. Clark, that you have
10 not been a sworn law enforcement officer for
11 28 years?

12 A. Since 1993. You're correct.

13 Q. Were you ever the lead detective in any homicide
14 investigation during the course of your law
15 enforcement career?

16 A. Not the lead detective.

17 Q. When were you first contacted by counsel for
18 Patrick Pursley with respect to this matter?

19 A. January 20, 2021.

20 Q. And who was it that contacted you?

21 A. Ms. Lindsay Hagy.

22 Q. Prior to January 20, 2021, had you ever worked
23 with the law firm Loevy and Loevy before?

24 A. Yes.

- 1 Q. How many times?
- 2 A. I believe there are two other times, maybe three.
- 3 Q. Do you recall the particular cases that you worked
4 on for Loevy and Loevy besides this one?
- 5 A. No.
- 6 Q. Were those cases that were in the state of
7 Illinois?
- 8 A. Yes.
- 9 Q. Do you know the jurisdictions where those cases
10 were pending?
- 11 A. Chicago.
- 12 Q. And when did you work on those other cases for
13 Loevy and Loevy?
- 14 A. It's been some time ago. It's been over -- it's
15 not on the four-year list. It would be beyond
16 that, maybe ten years ago.
- 17 Q. Do you recall the types of cases that you worked
18 on for Loevy and Loevy other than this one?
- 19 MS. HAGY: Objection, scope and
20 relevancy.
- 21 MR. IASPARRO: You can answer, sir.
- 22 A. Cases involving police misconduct.
- 23 BY MR. IASPARRO:
- 24 Q. Do you know if any of those cases had to do with

- 1 allegations of wrongful conviction?
- 2 A. Yes.
- 3 Q. Did both or -- both of those cases involve
- 4 allegations of wrongful conviction?
- 5 A. Both? One I recall did.
- 6 Q. And as you sit there today, do you remember the
- 7 name of that case?
- 8 A. As I said earlier, no, I don't remember precise --
- 9 I remember the detective involved. His name was
- 10 Burge.
- 11 Q. Jon Burge, Chicago PD?
- 12 A. Sounds about right.
- 13 Q. What were you hired to do in this case, sir?
- 14 A. To review the file and to write a report based on
- 15 my training and experience.
- 16 Q. And you did in fact draft a report which has been
- 17 produced in this case dated August 20, 2021; is
- 18 that true?
- 19 A. Yes.
- 20 Q. I'm going to share with you your document that has
- 21 appeared in front of you on your screen,
- 22 Mr. Clark.
- 23 A. I see it.
- 24 Q. We'll mark this as Exhibit 1 for your deposition.

1 Do you recognize this as the Rule 26(a)(2) report
2 that you drafted with respect to this matter, the
3 Patrick Pursley versus City of Rockford, et al,
4 case?

5 A. Yes.

6 Q. And scrolling down the report itself is 36 pages
7 in length; is that true?

8 A. Yes.

9 Q. And then attached to the report is a copy of your
10 resume or c.v., if you will, followed by a listing
11 of the testimony that you've given in the last
12 four years, correct?

13 A. Yes.

14 Q. How many reports like this have you drafted over
15 the course of the last 28 years?

16 MS. HAGY: Objection, form.

17 A. I have not counted, but it's probably over 1500.

18 BY MR. IASPARRO:

19 Q. Looking at Line 1 of your report, sir, in
20 particular the first paragraph, it says, "Thank
21 you for retaining me to review and render opinions
22 regarding the investigation into the Andrew Ascher
23 homicide and the subsequent arrest and prosecution
24 of Mr. Patrick Pursley as a result of the actions

1 of Rockford Police Department defendant officers
2 and Illinois State Police defendants." Did I read
3 that correctly?

4 A. Yes.

5 Q. Did you start your analysis with the premise that
6 the arrest and prosecution of Mr. Patrick Pursley
7 was as a result of the actions of the Rockford
8 Police Department defendant officers and Illinois
9 State Police defendants?

10 MS. HAGY: Objection, form.

11 A. I believe that's the heartbeat of the report, and
12 I would agree with that.

13 BY MR. IASPARRO:

14 Q. Did you ever consider that it was the actions of
15 Mr. Pursley which led to his arrest and
16 prosecution?

17 MS. HAGY: Objection, form.

18 A. Well, I certainly comment on his actions. This is
19 about his conviction for murder. I'll wait for
20 the next question.

21 BY MR. IASPARRO:

22 Q. Did you ever consider that it was the testimony of
23 witnesses implicating Mr. Pursley which led to his
24 arrest and prosecution?

1 MS. HAGY: Objection, form,
2 mischaracterizes evidence.

3 A. Well, I know it's in my report that there was
4 witness testimony and comment on the -- on that
5 and how it was brought into the case that -- by
6 the Rockford detectives.

7 BY MR. IASPARRO:

8 Q. Did you consider the testimony of
9 Samantha Crabtree before forming your opinions?

10 A. Well, of course I did. I commented on her
11 significantly in my report.

12 Q. What about the testimony of Marvin Windham, did
13 you consider the testimony of Marvin Windham
14 before forming your opinions?

15 A. I did, and that's also commented to I think
16 considerable extent in my report.

17 Q. Did you find their testimony credible, sir?

18 MS. HAGY: Objection, form.

19 A. I think I -- and if you look at the next paragraph
20 on the first page, I don't determine credibility.
21 I commented on the -- on what a detective that is
22 assigned to solve the murder would view their --
23 the credibility of their statements.

24 BY MR. IASPARRO:

1 Q. And with respect to the portion of the report, I
2 think you're referring to the second paragraph on
3 Page 1, first sentence that is on the screen in
4 front of you, "In expressing my opinions in this
5 report, I do not make credibility determinations."
6 That's what you wrote, correct?

7 A. Yes. And that's how I took your question.

8 Q. Is that a true statement, sir?

9 A. I'm sorry?

10 MS. HAGY: Objection, form,
11 argumentative.

12 THE WITNESS: I'm sorry. I didn't
13 catch the question.

14 BY MR. IASPARRO:

15 Q. I asked if that is a truthful statement.

16 A. My intention was that everything in the report is
17 truthful, and my testimony today is truthful. So
18 I consider it was not my position or assignment to
19 determine credibility.

20 Q. Have you ever been retained in a wrongful
21 conviction case, civil case, by the defense?

22 MS. HAGY: Objection, form, asked and
23 answered.

24 A. I do not recall for a murder conviction by the

1 defense.

2 BY MR. IASPARRO:

3 Q. Will you explain for me your educational
4 background, sir.

5 A. Yes. The highest level of education is California
6 POST Command College. It's a two-year master's
7 level program where the diploma is given by the
8 Department of Justice rather than the state --
9 rather than the university system, and it requires
10 a thesis. I'll wait for the next question.

11 Q. I'd like to ask you about your law enforcement
12 background. As I understand from reviewing your
13 resume, you began your career in 1965 working in
14 the Los Angeles County Jail; is that correct?

15 A. Yes.

16 Q. And did you work there for -- it looks like about
17 three years before moving to the patrol division?

18 A. Yes. That included the academy attendance.

19 Q. How long were you in the patrol division?

20 A. Two years.

21 Q. And that's with the Los Angeles County Sheriff's
22 Department?

23 A. Yes.

24 Q. Patrol is not the same as a detective, is that

1 accurate, with respect to the L.A. County
2 Sheriff's Department?

3 A. Yes.

4 MS. HAGY: Objection, form.

5 BY MR. IASPARRO:

6 Q. I'm sorry. What was your answer?

7 A. The answer is yes.

8 Q. All right. And I saw a reference in your resume
9 that beginning January of 1970, you were a --
10 what's referred to as a station detective at the
11 San Dimas Station; is that correct?

12 A. Yes.

13 Q. What is a station detective?

14 A. Station -- the sheriff's department in California
15 is like a precinct or a division in a police
16 department. And it has a detective bureau. And I
17 was assigned to the detective bureau at the
18 station. The department also had a detective
19 division as well, so that's the distinction
20 between the two.

21 Q. So the station detective would not be part of the
22 detective division, if I understand you correctly?

23 A. Right. The way the structure of the department
24 is, the station detectives fall into the -- into

1 the patrol division organization, which is --
2 there were three at the time I was with the
3 department.

4 Q. Then moving forward in time, it looks like in
5 December of 1970, you moved over to the technical
6 services division; is that correct?

7 A. Yes. I was promoted and assigned to the -- what
8 was commonly called the radio room and plus the
9 moving of the department from analog to digital
10 system.

11 Q. Did you have any investigate responsibilities
12 while you were assigned to the technical services
13 division?

14 A. No.

15 Q. And then from December of 1972 until December of
16 1973, you were back at the San Dimas Station in
17 the patrol division?

18 A. Yes, as a patrol sergeant or a station sergeant.

19 Q. From February of 1974 through January of 1976, you
20 were in emergency operations in the patrol
21 division; is that right?

22 A. Yes.

23 Q. And what were your responsibilities there?

24 A. So the -- this was a time when the legislature had

1 changed California law to place the sheriff into
2 the lead during civil disorders and natural
3 disasters in the county. So it would require the
4 establishment of a bureau, and I was selected with
5 three other sergeants to establish that bureau and
6 write the standing orders for response to those
7 types of incidents.

8 Q. Did you have any investigative responsibilities
9 while you performed that role?

10 A. No.

11 Q. Next it looks like you went to the administrative
12 division and were responsible for federal surplus
13 property for a couple of years; is that right?

14 A. Yes. Actually that was part of the emergency
15 operations bureau. I never moved the desk, but it
16 was during that time when I worked with federal
17 authorities that I learned that we could access
18 surplus property from federal sources. And that's
19 a standing program. It puts about a million
20 dollars a month into the sheriff's department
21 worth of food and supplies and machinery, et
22 cetera.

23 Q. Did you have any investigative responsibilities
24 while you served in that capacity?

1 MS. HAGY: Objection, form.

2 A. No.

3 BY MR. IASPARRO:

4 Q. And next it looks like you were assigned to the
5 custody division at the central jail between
6 April, 1978, and April, 1980; is that correct?

7 A. Correct. I was promoted to lieutenant and went
8 back into the central jail.

9 Q. So would that be the corrections side of the
10 sheriff's department?

11 A. Corrections side, yes.

12 Q. And then next it appears you were assigned to the
13 field operations -- field operations at the
14 Crescenta Valley Station for four years; is that
15 right?

16 A. Yes.

17 Q. First as a watch commander?

18 A. Right. There are four major positions for
19 lieutenant, actually three, and then I assumed a
20 command as a lieutenant. So -- and that, as I
21 said, it's like a precinct, so there's essentially
22 what you're looking at. One year as a watch
23 commander, next year the detective bureau
24 commander. The next year is the administrative

1 lieutenant, and then the next year is command in
2 station.

3 Q. And when you say the detective bureau commander,
4 is that again the station detective bureau?

5 A. Yes.

6 MS. HAGY: Objection, vague.

7 THE WITNESS: As I explained, the
8 station had a bureau, detective bureau, and a
9 lieutenant is the typical commander of that part
10 of the station operation.

11 BY MR. IASPARRO:

12 Q. And again that's separate and apart from the
13 actual detective division of the L.A. County
14 Sheriff's Department, correct?

15 MS. HAGY: Objection, vague.

16 A. Yes. The sheriff's department had a detective
17 division as one of its divisions.

18 BY MR. IASPARRO:

19 Q. Were you ever assigned to the actual detective
20 division during the course of your career?

21 MS. HAGY: Objection, vague,
22 argumentative.

23 MR. IASPARRO: How was that vague,
24 Lindsay?

1 MS. HAGY: Just saying detective
2 bureau. I just think it can be misleading.

3 MR. IASPARRO: I didn't say detective
4 bureau. I asked him about the detective division.
5 I think he understands the question.

6 A. No.

7 BY MR. IASPARRO:

8 Q. So just to be clear, you never were assigned to
9 the detective division of the L.A. County
10 Sheriff's Department during the course of your law
11 enforcement career?

12 A. Yes, that's correct.

13 Q. Moving forward it looks like from May 1 of 1984
14 until November of 1987 you were with the reserve
15 forces bureau; is that accurate?

16 A. Yes.

17 Q. What is that?

18 A. So in Los Angeles and the sheriff's department was
19 the largest sheriff's department in the state,
20 7,000 sworn and had a large contingent of
21 reserves. Every -- almost every department in the
22 state had reserves. And the legislature had
23 changed requirements for reserves. It was an
24 intensive project to realign qualifications and

1 make sure the training and certifications
2 occurred. And that was the method that the
3 state -- I worked very closely with the state, and
4 then they embraced those changes and made them
5 statewide. So -- and at that point also I became
6 a graduate of the POST Command College.

7 Q. And it looks like you finished up your career the
8 last five and a half years or so at field
9 operations, Region I, NORSAT, N-O-R-S-A-T; is that
10 correct?

11 A. Yes.

12 MS. HAGY: Objection, vague.

13 BY MR. IASPARRO:

14 Q. With what's referred to as the fugitive
15 apprehension unit?

16 A. More than that. NORSAT stood for Northern
17 Regional Surveillance and Apprehension Team. That
18 was the nomenclature, and there were two units in
19 the entire county, one under the auspices of the
20 sheriff's department and was multi-jurisdictional,
21 including federal. And we were cross sworn as
22 federal officers. And the other was with the
23 LAPD. Their team was called SIS, or Special
24 Investigation Section. They were exclusively LAPD

1 officers.

2 Q. What was the primary role of NORSAT?

3 A. NORSAT's role was to investigate, surveil and
4 apprehend and a very successful operation. So
5 often, very often we would be given the case in
6 total. And as I wrote, 80 percent of the cases
7 were homicide cases, but the rest were
8 kidnappings, extortions, some special
9 surveillances, which I won't talk about more, and
10 large narcotic operations, such as 25 kilos or
11 more, nothing less, et cetera.

12 Q. Between when you started with the L.A. County
13 Sheriff's Department in 1965 and when you retired
14 in 1993, did the L.A. sheriff's department have
15 designated homicide detectives?

16 A. Yes. They had --

17 MS. HAGY: (Interrupting) Objection,
18 form.

19 THE WITNESS: They had a homicide
20 bureau in the detective division.

21 BY MR. IASPARRO:

22 Q. Were you ever assigned to that homicide bureau?

23 A. As I testified earlier, no.

24 Q. After you retired your resume indicates that you

1 worked for the State of Ohio (sic) Juvenile
2 Department of Corrections; is that correct?

3 A. Yes.

4 Q. What did you do for them?

5 A. Well, when I retired I went to Rexburg, Idaho,
6 with the intention of just doing community service
7 as well as teach in the high school -- in the
8 school district, mostly in the high school. And
9 because of the work I did with some programs of
10 at-risk youth and establishing an alternative
11 high school, the governor selected me along with
12 11 others to establish the department of juvenile
13 corrections, which was spun off from the Idaho
14 Department of Health and Welfare. And I did that
15 for 18 months. And that included running the
16 single juvenile facility, which is in
17 Saint Anthony Idaho, during that time.

18 Q. Over the course of your law enforcement career,
19 did you ever attend a homicide investigation
20 school or training class?

21 A. No.

22 MS. HAGY: Objection, vague.

23 THE WITNESS: No.

24 BY MR. IASPARRO:

1 Q. You are aware that such courses exist and are
2 offered around the country, correct?

3 MS. HAGY: Objection, form.

4 A. Yes, I'm aware of it.

5 BY MR. IASPARRO:

6 Q. All right. For example, the University of
7 Louisville Southern Police Institute, have you
8 heard of that?

9 MS. HAGY: Objection, form, relevance,
10 scope.

11 A. I'm not familiar with their program. I don't -- I
12 would expect there's a number of facilities that
13 offer the training.

14 BY MR. IASPARRO:

15 Q. All right. Have you ever held any certification
16 from any source as a lead homicide investigator?

17 MS. HAGY: Objection, form.

18 A. I didn't quite -- a certification from any source,
19 and then I didn't hear the rest of the question.

20 BY MR. IASPARRO:

21 Q. As a lead homicide investigator.

22 A. Well, I was certified by the department as a lead
23 investigator and accepted, and I trained both
24 at -- at POST at that time didn't have a

1 designated subject expert. Everything I taught
2 through POST was considered and accepted as -- as
3 qualified and certified the students. But I was
4 not -- I didn't have a particular certification
5 other than what I've cited in my resume. I
6 retired out with a POST advanced certificate.

7 Q. Are you familiar with the Illinois Law Enforcement
8 Training and Standards Board?

9 A. I'm aware of their -- that Illinois has what I
10 will term POST. I commented and testified on POST
11 throughout the country and including in Illinois.

12 Q. Okay. But my question is specific to Illinois Law
13 Enforcement Training and Standards Board. Are you
14 familiar with their training and/or standards?

15 MS. HAGY: Objection, form, asked and
16 answered.

17 Go ahead.

18 A. Yeah. I think I did answer it. It was not given
19 to me as part of the evaluation of this case. And
20 it -- the curriculum was not provided. However, I
21 did comment on the officers themselves and their
22 statement that they were not trained in certain
23 key areas.

24 BY MR. IASPARRO:

1 Q. At the end of your report, the last 21 pages in
2 fact, you list out your various testimony over the
3 course of the last four years, correct?

4 A. Yes.

5 Q. Are all of those cases that are listed cases in
6 which you rendered opinions in the area of police
7 practices?

8 MS. HAGY: Objection, form.

9 A. As I understand the question, yes. They're
10 related to the police profession and police
11 procedures.

12 BY MR. IASPARRO:

13 Q. Do you know if any of the cases that are listed on
14 those 21 pages involved you rendering opinions on
15 the defense side of civil cases?

16 MS. HAGY: Objection, form.

17 A. There are -- what you have as listed testimony, I
18 think there are three still on that list that go
19 back to the four years.

20 BY MR. IASPARRO:

21 Q. That were on the defense side?

22 A. Yes, testimony.

23 Q. Okay. And as you sit there, do you know which
24 ones those are?

1 A. I'm just -- I could research it, but there should
2 be one Virginia Beach for a Virginia trial for
3 the -- a shooting death by the SWAT team. I was
4 their expert. And it involved an operation like
5 NORSAT. There should be one called Rosenblatt
6 versus Hillsborough. That was a deposition.
7 There's one -- and I can't remember the name, but
8 it was -- the name of the case, but it would be
9 with Kansas City Missouri Police Department. And
10 there should be one with Redondo Beach. That had
11 to do with pursuit procedures.

12 Q. Mr. Clark, what do you consider to be your area of
13 expertise?

14 MS. HAGY: Objection, form.

15 A. Well, I listed it out in my general statement of
16 qualifications, but it's -- briefly it's police
17 procedures that include police administration,
18 detective administration, detective procedures,
19 jail administration, jail procedures, patrol
20 administration, patrol procedures, training and a
21 professional standard as training. I think that
22 is the broad-brush description.

23 BY MR. IASPARRO:

24 Q. Are there any national police practices, standards

1 which govern local law enforcement agencies?

2 MS. HAGY: Objection, form.

3 MR. IASPARRO: I'll just give you a
4 standing objection on form for every question I
5 ask if you want it, Lindsay.

6 MS. HAGY: No, thank you.

7 MR. MOGBANA: Well, I'm just going to
8 mention here, Lindsay, you essentially are just
9 taking our time. There are a line of attorneys
10 who would question after Michael does. So all you
11 are doing -- you make a legal objection. The
12 witness has no problem. He understands the
13 question.

14 But I'm just going to make it on the
15 record that that's improper, but let's see how it
16 goes going forward.

17 THE WITNESS: Are you ready or should I
18 wait?

19 MR. IASPARRO: I'm ready if you
20 remember the question.

21 A. I remember the question. You asked -- and I took
22 in the question any organizations that govern
23 police departments. And there are a number of
24 federal requirements that would govern and that

1 departments are required to adhere to, but there
2 is no agency that would govern a police department
3 unless we talk about a -- something like a consent
4 decree, which I've been involved with in certain
5 ways. So that would be the only time a
6 national -- in my answer to your question -- a
7 national organization would have -- would govern a
8 police department.

9 BY MR. IASPARRO:

10 Q. I'm going to turn to Page 6 of your report. I'll
11 scroll down to it here.

12 THE WITNESS: I need to make a
13 correction on Page 2. I'll wait for -- unless --
14 I just need to make you aware of it.

15 BY MR. IASPARRO:

16 Q. All right. Let's do that now.

17 A. Sure. I've been waiting for the opportunity. So
18 on Page 2, Item 4 is a list of names and who they
19 are fundamentally and identified briefly and what
20 they -- whether they gave trial or a deposition
21 testimony or both. First and foremost,
22 Detective Forrester should have been included even
23 though he's deceased because he gave trial
24 testimony and I had reviewed it. So he's missing

1 off that list. I can explain how this is a -- was
2 a non-precise list that went into the final
3 report. On (h), 4(h), I mislabeled Mr. Peter
4 Striupaitis. Let me spell it for you,
5 S-t-r-i-u-i-p-a-i-t-i-s (sic). He is a lab
6 technician, not a detective. Also, Jack Welty,
7 which is (i), he was a lab technician and not a
8 detective. I omitted the testimony of
9 Lester Brown and the deposition testimony of
10 Patrick Pursley himself. That -- oh, and then
11 on (o), Item (o), the 30(b)(6) witness, I forgot
12 to list that it was deposition and not trial. So
13 that completes that list of corrections.

14 MS. HAGY: I also want to add that
15 Mr. Clark has testified since the issuance of this
16 report, so we can update his trial testimony and
17 deposition list, too.

18 MR. MOGBANA: I understand from the
19 rules you are required to, so it's not whether you
20 can. You are required to update that, so . . .

21 MS. HAGY: Sure. We will.

22 BY MR. IASPARRO:

23 Q. All right. Now going to --

24 THE WITNESS: (Interrupting) Thank you

1 for that opportunity.

2 MR. IASPARRO: Sure.

3 BY MR. IASPARRO:

4 Q. I direct your attention now to Page 6 of your
5 report, in particular the top paragraph. And I'm
6 going to focus on the last sentence there where it
7 says, "These methods and principles are also
8 embraced by every state training commission of
9 which I am aware, as well as the national
10 standards established by the U.S. Department of
11 Justice." Did I read that accurately, sir?

12 A. Yes.

13 Q. What part of those national standards established
14 by the U.S. Department of Justice which you refer
15 to in that sentence?

16 A. Well, they're the constitutional requirements
17 first, which are the bailiwick of the U.S.
18 Department of Justice. And you may recall, I
19 commented consent decrees. They're often
20 expressed there on the requirement to follow the
21 rules as outlined in the constitution and to --
22 and that includes force and to guarantee equal
23 access to constitutional requirements under the
24 law. So -- and there are national standards that

1 are embedded in every POST or the equivalent of
2 every POST -- some states call it a little
3 different -- and in their basic training, which is
4 required in order for a person to exercise police
5 powers in their particular state. I could -- you
6 want me to parse out what those requirements are?

7 Q. Let me ask you a couple of follow-up questions.
8 First, can we agree that there was not and is not
9 a consent decree that is relevant to this
10 particular case?

11 A. I agree. I'm just simply using that as an example
12 of how the -- the question you posed about when
13 can there be imposition by -- by federal source or
14 outside the state. But I think the brief answer
15 would be that every person under the constitution
16 is entitled to equal -- to process under the law.
17 And when that process is denied, then it's a
18 violation of their constitutional rights.

19 Q. All right. I guess what I'm trying to understand
20 is that when you refer to the national standards
21 established by the U.S. Department of Justice, if
22 I'm understanding your testimony correctly, you're
23 referring to the constitutional standards, Fourth
24 Amendment, for example, Fifth Amendment; is that

1 what we're talking about?

2 MS. HAGY: Objection, mischaracterizes
3 prior testimony.

4 A. Well, it includes that certainly. I think that's
5 the -- that's the most important aspect, but it
6 includes also that there are standards of
7 investigation and they're typically in case law.
8 And I'm not the lawyer here, but that's expressed
9 in appellate cases and supreme court cases. And
10 they are the national standards.

11 BY MR. IASPARRO:

12 Q. I guess what I'm trying to understand is what are
13 the national standards which you're referring to
14 which were established by the U.S. Department of
15 Justice. Is there some manual or document that
16 I'm unaware of that sets forth what these national
17 standards are by the department of justice?

18 MS. HAGY: Objection, asked and
19 answered.

20 A. They are. And they're -- and my commentary is
21 basic POST. But a person, an individual is
22 required to be taught and be tested on before they
23 can assume police powers. But as you are aware,
24 I'm sure, there are even higher levels of

1 education that include that. And as you know in
2 my report I talk about one is called Brady.
3 That's an example. So there are cases there are
4 national standards, and Brady is one of them.

5 BY MR. IASPARRO:

6 Q. And every time you refer to POST in your testimony
7 today, that is a California training board,
8 correct?

9 A. Well, the California training is called in
10 California P-O-S-T, Peace Officer Standards and
11 Training. Our next-door neighbor in Arizona is
12 called A-Z POST. In Texas it's called TCOLE. But
13 they all -- it's equivalent. There's an
14 equivalent. So I -- you're right. I'm just using
15 it as a generic POST.

16 Q. Are you aware of any national standards for
17 homicide investigations which guide or govern the
18 manner in which homicide investigations are
19 conducted?

20 MS. HAGY: Objection, form, asked and
21 answered.

22 A. There are organizations that teach --

23 THE WITNESS: Can I go off the record?

24 I have an emergency phone call. Can we

1 go off the record just for two minutes?

2 MR. IASPARRO: Sure.

3 MR. MOGBANA: Five-minute break real
4 quick.

5 (A brief recess was taken.)

6 BY MR. IASPARRO:

7 Q. All right. I think where we left off I had
8 asked you whether you are aware of any national
9 standards for homicide investigations which guide
10 or govern the manner in which homicide
11 investigations are conducted.

12 A. Yes. So --

13 MS. HAGY: (Interrupting) Objection,
14 form, asked and answered.

15 THE WITNESS: Okay. So there -- first
16 of all, the department of justice sponsors studies
17 and makes -- publishes documents and papers and
18 often produces manuals through sponsorship with
19 COPS, C-O-P-S, Community Oriented Policing, and
20 joins in with other organizations like PERF,
21 CALEA, the IACP, all of which contribute
22 documentations or sample training curriculum and
23 so forth. And I have access to those manuals. I
24 belong to a number of them. But they do not

1 forcefully impose their recommendations under the
2 color of law. It's the department of justice that
3 would have that authority. That's my answer.

4 BY MR. IASPARRO:

5 Q. When you say the department of justice would have
6 the authority to impose particular standards under
7 the rule of law, what authority is that?

8 A. Because they would -- they would impose it through
9 a variety of methods, either civilly or they would
10 impose it through criminal investigations and
11 arrests and prosecution.

12 Q. All right. I'm going to scroll up to the bottom
13 of Page 5 of your report now. You indicate in the
14 last paragraph of Page 5 that you "became very
15 well versed in how to conduct and supervise
16 homicide investigations from start to finish." Do
17 you see that?

18 A. Yes.

19 Q. And the fact is you never actually conducted a
20 homicide investigation from start to finish; isn't
21 that right?

22 MS. HAGY: Objection, form,
23 mischaracterizes prior testimony.

24 A. To the contrary. I commanded some extremely

1 high-level homicide investigations. And the
2 question you posed, was I ever the case ace,
3 a-c-e, or lead investigator assigned and not when
4 I was a line officer or line detective to a
5 homicide, but after I assumed command in the
6 command status, I directed and saw that the
7 investigations were complete and proper. I knew
8 from start to finish how they should be conducted.

9 BY MR. IASPARRO:

10 Q. During the course of your career, did you ever
11 interview a homicide suspect?

12 A. Yes, I've done that.

13 Q. Ever take a written statement from a homicide
14 suspect?

15 A. I -- in conjunction with the recorded statement.
16 I had never taken a written interview or conducted
17 one. It was always recorded and then transcribed.

18 Q. Were you ever a crime scene investigator during
19 the course of your career?

20 A. No.

21 MS. HAGY: Objection, vague.

22 THE WITNESS: I supervised and
23 facilitated -- I think that's a very important
24 word -- the crime scene personnel.

1 BY MR. IASPARRO:

2 Q. Did you ever work in a crime laboratory?

3 A. No.

4 Q. Do you have any specialized forensics firearms
5 training?

6 MS. HAGY: Objection, vague.

7 A. Only as provided to me through my crime lab
8 experience as a detective in association with the
9 crime lab personnel.

10 BY MR. IASPARRO:

11 Q. Okay. Would you consider yourself an expert in
12 the area of forensics firearms examination?

13 A. Not to the level -- not to the level of Murdock or
14 Coleman. As a generalist detective, I understand
15 the necessity to preserve and how the evidence
16 should be recovered and how the likely
17 possibilities of investigative leads from firearms
18 evidence.

19 Q. Are you familiar with Miranda warnings as they're
20 commonly referred to?

21 A. I am.

22 Q. And what is your understanding of the
23 circumstances in which Miranda warnings need to be
24 given during the course of a police interview or

1 interrogation of an individual?

2 MS. HAGY: Objection, form.

3 A. That it's required as a constitutional requirement
4 when the person is considered to be a suspect in a
5 crime.

6 BY MR. IASPARRO:

7 Q. Had you ever had occasion to present the results
8 of a homicide investigation to a prosecutor to
9 seek authorization of criminal charges against a
10 suspect?

11 A. I've supervised that process and have been present
12 with the lead detective while that evidence was
13 presented, so the answer is -- both on a federal
14 level and on a state level.

15 Q. Have you ever had occasion to present the results
16 of a homicide investigation to a judge to seek
17 authorization for an arrest warrant for a suspect?

18 A. Not written the affidavit. I approved the
19 affidavit before submission, but I have not -- as
20 I understand the question, I have not done that.

21 Q. Mr. Clark, up through today's date do you know the
22 amount of time that you spent on this case?

23 A. I do not know exactly. I just -- it's a lot of
24 hours.

1 Q. Okay. And today you're billing out at \$350 per
2 hour; is that correct?

3 A. For the testimony, 350 an hour, for the testimony
4 in this deposition.

5 Q. Do you know how many hours you spent authoring
6 your report?

7 A. Yes. I think it would be safe to say 25 to
8 30 hours of -- devoted to the report.

9 Q. And did you physically type the report?

10 A. Yes, I did. That's why -- I'm sorry. Yes, I did.

11 Q. Well, I mean it sounds like a silly question, but
12 I mean some people don't physically type it
13 themselves. That's what I'm asking you.

14 A. No. I'm sorry. And I did not mean to -- it was
15 not -- I did not intend to be silly. I laughed
16 because I just had to correct something that I
17 should have caught, but that's typical. The
18 answer is yes, I write the report, and I do it on
19 a computer.

20 Q. And were any portions of the report written by
21 anybody other than you?

22 A. No.

23 MS. HAGY: Objection. I'm objecting to
24 questions about drafting under Rule 26. That's

1 privileged.

2 MR. IASPARRO: You can answer.

3 THE WITNESS: The answer is no.

4 BY MR. IASPARRO:

5 Q. Have either you as a witness or any of your
6 opinions ever been excluded by any court,
7 Mr. Clark?

8 A. There have been motions in limine as required.
9 That's all I can recall. But, yeah, there's
10 motions in limine.

11 Q. And have you ever had any sanctions imposed
12 against you by any court?

13 A. There's been one sanction.

14 Q. What was the nature of that?

15 A. It was a case involving a shooting death and --
16 and the same law firm and the same police
17 department. And after writing that report, I was
18 called in to do a deposition on another shooting,
19 same law firm, same department. And they asked me
20 some questions about the previous report, and I
21 answered those questions. And then they went to a
22 federal judge, Judge Larson in fact was his name,
23 and alleged that I had violated the
24 confidentiality rules and insisted on a sanction.

1 And in camera he -- he granted the sanction and
2 gave me instructions not to discuss it further and
3 if anybody had any other questions, to -- he would
4 provide those himself. And that was the result of
5 the sanction.

6 Q. I want to focus in now on Pages 7 through 9 of
7 your report, the section with the heading, "Brief
8 Overview of Standard Police Practices in 1993 and
9 the Deviations I Observed in this Investigation."
10 Do you see that?

11 A. Yes.

12 Q. I want to ask you, are you rendering an opinion in
13 this case, Mr. Clark, that any Rockford Police
14 Department officer or detective engaged in any
15 deliberately-illegal or immoral act that
16 contaminated the core of the Pursley
17 investigation, as you wrote at the bottom of
18 Page 7 of your report?

19 MS. HAGY: Objection, form.

20 A. As I answered previously, it's not -- that --
21 Paragraph 2 on Page 1 is -- addresses that kind of
22 accusation, but I need to say my review of this
23 case and how things evolved resulting in his
24 conviction are very troubling based on my

1 understanding of what occurred and what -- and I
2 can give you some examples. But I am not -- and I
3 don't think you can find it in the report, that
4 I'm not accusing the officers of a -- of -- as
5 you've asked the question.

6 BY MR. IASPARRO:

7 Q. Did you begin this case with -- from the premise
8 that Mr. Pursley is innocent of having committed
9 the Andrew Ascher homicide?

10 A. Thank you. Because there -- in your -- when I sat
11 down, of course I have the -- the benefit of the
12 end result and this Judge McGraw's -- McGraw
13 commentary, so I can see it beginning to end. And
14 that's -- but so I did my very best to go back to
15 the murder itself and then what happened as the
16 investigative process occurred that set into
17 motion the convict -- the wrongful conviction and
18 incarceration for the murder. So -- I think I
19 lost track of the question. So that was the
20 process. I don't know if I answered it
21 completely. I'll wait for --

22 Q. (Interrupting) Let me ask the question maybe a
23 little differently. As you sit there right now,
24 do you know whether Patrick Pursley killed

1 Andrew Ascher?

2 A. Well, I know that he was found -- I'll use the
3 term factually innocent. He was given -- and was
4 given a declaration of innocence for the murder.
5 And based on the evidence of -- what I have to say
6 is based on the evidence, there is no connection
7 between Pursley and the murder.

8 Q. But you don't know for sure, do you?

9 A. Well, I was not there. This is long ago. If he
10 did, he did it with a different gun. That's for
11 sure, if he did. And the whole -- the case
12 collapses because the heartbeat of the whole thing
13 is this -- this gun was the murder weapon.

14 Q. I want to talk about that for a second, because in
15 making that statement you have to accept that
16 Mr. Murdock and Mr. Coleman are correct in their
17 opinions and the state police forensic crime lab
18 experts are wrong, right?

19 MS. HAGY: Objection, form.

20 A. Yeah. Per the record, you'd accept that on that
21 basis. Per the record, which went to trial,
22 that's correct, that -- that the crime lab was
23 incorrect. The process -- and as my commentary
24 is, it has a lot to do with the process was

1 incorrect.

2 BY MR. IASPARRO:

3 Q. But I mean at bottom you would have to accept,
4 find credible Murdock and Coleman and find not
5 credible the state police crime lab forensics
6 examiners, right?

7 MS. HAGY: Objection, form, vague,
8 overly broad.

9 A. In that regard my testimony is that the judge is
10 correct and gave very articulate reasons why and
11 in considerable detail, and I found that those
12 details accurately depicted in the record.

13 BY MR. IASPARRO:

14 Q. I'm going to turn to the top of Page 8 of your
15 report. Actually the bottom of Page 7, top of
16 Page 8, so starting with the last paragraph on
17 Page 7. "These deliberate acts can include
18 statements from witnesses that are extracted
19 through mental coercion and/or physical force,
20 the manipulation of the evidence to favor a
21 predetermined point of view, and hiding
22 exculpatory facts discovered during the
23 investigation that would be important to the
24 defendant. According to the record, a number of

1 these acts occurred in this case and are listed
2 below." Did I read that accurately?

3 A. Yes, you did.

4 Q. What are you referring to there, "a number of
5 these acts occurred in this case and are listed
6 below"?

7 MS. HAGY: Objection, form.

8 A. I'm sorry. I didn't catch the first part of your
9 question.

10 BY MR. IASPARRO:

11 Q. I want to know what you're referring to, what are
12 the acts which occurred in this case which fall
13 into those categories of deliberate acts as you've
14 listed them out.

15 A. Oh. Thanks. Because this is the introductory
16 statement that now the report is -- was designed
17 and written with the intent of directing the
18 reader to certain aspects of the evaluation. And
19 so from that paragraph to Page 36 is my commentary
20 exactly on those points; physical evidence,
21 statements from witnesses, those types of things.
22 And so those aspects, which are exculpatory facts,
23 predetermined point of view, failure to follow
24 leads, they're all -- flow from this page down

1 to 36. So you want me to --

2 Q. (Interrupting) We'll go through them. That's
3 fine.

4 A. I'll leave the answer there. I thought I covered
5 it.

6 Q. Well, that's why we're here today, because we get
7 to ask questions about what you wrote, right?

8 A. Sure. Yeah. And I'm happy to talk about any
9 aspect. There's a number, so -- but, you know,
10 they go to the physical evidence, how it's
11 harvested and handled, failure to follow leads
12 that indicates you got blinders on, you figure you
13 got your guy and you're not going to follow
14 anything else, and embracing statements that are
15 fragile -- I'll use the term fragile -- and have
16 real problems, and they combine. It's a perfect
17 storm. And then he gets convicted.

18 Q. Middle of Page 8, which is up on your screen right
19 now, paragraph that says, "The Rockford Police
20 Department deviated from standard police practices
21 consistently throughout this investigation in many
22 areas from their handling of the physical evidence
23 to their interrogation of witnesses. The decision
24 to regularly stray from the standard ways of

1 policing and to cut corners supports a conclusion
2 that these detectives set their sights on
3 Mr. Pursley and shaped the evidence and their
4 reports to fit their suspect." Did I read that
5 right?

6 A. Yes, you did.

7 Q. When you say, "The decision," what decision are
8 you referring to?

9 A. Everything I discuss in the report is a result of
10 a decision. For example, having the slugs and
11 shell casings and keeping them for two months
12 before you send them to the lab, that is a
13 decision, and that is contrary to standard
14 expected and required procedure. Another would be
15 failure to explore an ex-husband that has a --
16 apparently off the rails with the surviving
17 victim. Another is the Turner brothers where
18 these leads were immediate, right after the
19 murder, and they were not touched. And then we
20 have the -- Rebecca's interrogation, those things,
21 and then how the slugs were finally evaluated. So
22 those are all done pursuant -- there were others.
23 They were all done by the decision of the case
24 ace, mostly Forrester.

1 Q. I guess that was my question. When you say in
2 that sentence, "The decision," it seems to me that
3 that's a singular point in time, which I'm trying
4 to understand what you mean.

5 A. Right. And so -- thank you. Because you can --
6 and as a metaphor, you can see this as a pathway
7 to -- it starts with a murder and ends with
8 conviction, and it's gone -- and it's -- there
9 have been mistakes. And where's the key? The key
10 one begins with holding on to the most important
11 physical evidence at the -- at the time of the --
12 with the response to the murder, and those are the
13 shell casings and the bullets. There's just no
14 explanation for that.

15 Q. Let me ask you some questions about that. Let's
16 follow up on that a bit. Would you agree that
17 there was nothing to compare the cartridge cases
18 and fired bullets to on April 2, 1993?

19 MS. HAGY: Objection, form.

20 A. No. I would -- that is not a valid assumption,
21 and it certainly isn't a valid reason to hold on
22 to the evidence because "I don't have the gun."
23 But it does flavor what I'm talking about. "Well,
24 I've got a gun. Now I'm going to supply the lab

1 with the bullets." So the bullets themselves and
2 the casings immediately give some very important
3 information to the investigating officer or the
4 investigative team. And as you know Welty said,
5 "Well, based on the casings," only the casings
6 apparently, "looks to me like it's one of three
7 brands, and a Taurus is one of them." Well, if
8 they had that, just that information, they'd put
9 it out on the street we're looking for a Taurus.
10 And that's a lead. But they hold on to that for
11 two months until they get the Taurus. So you can
12 see, you know, there's some real conflicts here on
13 the procedure. And of course those -- the
14 physical evidence, the bullets themselves,
15 et cetera, will land key investigative evidence
16 that the officers will run with, not just hold on
17 for two months before they even send them to the
18 lab.

19 BY MR. IASPARRO:

20 Q. Let me ask you a question in terms of timing. Is
21 it your understanding that the Taurus firearm was
22 recovered from Mr. Pursley's apartment before any
23 of the crime scene evidence was submitted to
24 Mr. Welty?

- 1 A. I think there's like maybe a day. I have the
2 timing down. Forrester held on to -- now I say
3 held on to it. Rockford held on to it. You
4 didn't send it to the lab for two months.
- 5 Q. Here's my question, Mr. Clark: Is it your
6 understanding that the Taurus 9mm firearm was
7 recovered from Mr. Pursley's apartment before the
8 crime scene evidence was submitted to Mr. Welty
9 for his preliminary examination?
- 10 A. No. My review of the record was it was like one
11 day before when Windham gave the information that
12 there were -- that there were two guns Samantha
13 had and told him about Patrick and the crimes
14 alleged, that then the shell casings went to
15 Windham, and Windham said -- gave three brands,
16 one of which was a Taurus. And that next day they
17 went and got the Taurus -- got a Taurus out of the
18 apartment.
- 19 Q. We're going to talk about all that in more detail.
20 I want to go now to a portion of your report which
21 you entitle, "Overview of the Incident, Brief
22 Overview of Events and Commentary," starting on
23 Page 9. Do you see that in front of you?
- 24 A. Yes.

1 Q. And in particular that, "The Ascher Murder and
2 Rebecca George's Observations."

3 A. Right.

4 Q. Okay. So I'm going to pull up now what I'll mark
5 as Exhibit 2. This is a document that -- it's
6 Bates No. COR and Getty, C-O-R and Getty, 36
7 through 40, Officer McNally's report relating to
8 the Ascher homicide. Did you review this
9 document, sir?

10 A. Yes. And as you know I reference it on this page.

11 Q. I'm scrolling down in Officer McNally's report to
12 the narrative section which begins on Page 4. And
13 at the bottom of Page 4, you see the portion where
14 Officer McNally summarized in his initial
15 interview with Becky George, "Becky George told
16 reporting officer," that paragraph there?

17 A. Yes.

18 Q. And according to Officer McNally's report,
19 Miss George said, "An unknown-race male with a ski
20 mask over his face approached the truck. Suspect
21 had a gun in his hand. Suspect pointed the gun at
22 Ascher," and then looks like she wrote in, "Gun
23 held in both hands, and told him that he was
24 robbing them and that he wanted their money.

1 According to Becky, Ascher said, 'Oh, God' and
2 took out his wallet." And then scrolling down,
3 "Becky stated she took out her money, told the
4 suspect that this was all she had. She stated
5 Ascher was still taking his money out of his
6 wallet and the suspect just shot him. According
7 to Becky, the suspect then turned and fled. She
8 pointed in a southeasterly direction. She felt he
9 was only on foot but was unsure." Did I read that
10 correctly?

11 A. You did.

12 Q. All right. And going back to your report, you
13 indicated that, "Rebecca stated after the shot she
14 saw the assailant run away from the car in an
15 easterly direction." The report itself actually
16 said southeasterly, correct?

17 A. You're right.

18 Q. All right. And then going back to Miss George's
19 report -- well, your report indicates, "The
20 initial police interview of Rebecca states that
21 the assailant was an unknown-race male with a ski
22 mask over his face." And --

23 A. (Interrupting) That's Page 39, COR and Getty.

24 Q. Miss George did indicate that he sounded black

1 when he spoke, correct?

2 A. I have that in that paragraph, yes.

3 Q. Right. And you understand that Miss George was
4 only briefly interviewed at the scene by
5 Officer McAnally, who was the first officer on
6 scene, correct?

7 A. Yes.

8 MS. HAGY: Objection, form.

9 THE WITNESS: The answer is yes.

10 BY MR. IASPARRO:

11 Q. Okay. And did you review reports indicating that
12 Miss George was interviewed in more detail later,
13 both at the hospital and the police station?

14 A. Yes. And there's -- and that's where the
15 statement about her ex-husband comes in.

16 Q. Okay. And we'll get to that in a second. I show
17 you now what's been marked as Exhibit 3, which for
18 the record is COR and Getty 46 to 51. This is
19 Officer Drnek's report. Did you review this as
20 well, sir?

21 A. Yes, and that's what I referenced.

22 Q. Okay. And Officer Drnek was the officer who
23 interviewed Miss George at the hospital, correct?

24 A. Yes.

- 1 Q. And it would be accurate to say that Miss George
2 told Mr. Drnek that -- told Officer Drnek that she
3 believed the suspect was a black male because of
4 his voice?
- 5 A. Yes.
- 6 Q. That he had a thin build?
- 7 A. Yes.
- 8 Q. That the suspect wore a dark-colored ski mask
9 which was possibly blue as well as dark gloves?
- 10 A. Yes.
- 11 Q. That the suspect said, "This is a holdup" and
12 repeated that several times?
- 13 A. Yes.
- 14 Q. And I'm looking at the timing of this interview at
15 the hospital. Officer Drnek's report indicates
16 that he arrived at the hospital at about
17 2215 hours, so about 10:15 p.m., correct?
- 18 A. Correct.
- 19 Q. Which would be about 15 minutes after the murder
20 itself, according to the other reports in the
21 case; would you agree with that?
- 22 A. Yes.
- 23 Q. Would it be fair to say that the incident was
24 probably still pretty fresh in Miss George's mind?

1 A. Well, it's close in time, and you want to get the
2 statement close in time, sure.

3 Q. All right. Showing you next what's been marked as
4 Exhibit 4, COR and Getty 60 to 64. This is a
5 report by Detective Bruce Scott. Did you review
6 this document as well, sir?

7 A. Yes.

8 Q. And according to Detective Scott's report, he
9 interviewed -- first gathered information from
10 Officer Drnek at the hospital and then interviewed
11 Becky George later that evening at the police
12 station, correct?

13 A. Yes.

14 MS. HAGY: Objection.

15 Counsel, can you please show where
16 you're reading from when -- or what you're looking
17 at when you're representing the document.

18 MR. IASPARRO: I wasn't reading from
19 anything right there, but when I do, I will.

20 MS. HAGY: Okay. Thank you.

21 BY MR. IASPARRO:

22 Q. According to Detective Scott's interview of
23 Becky George -- we're looking at Page 4 of his
24 report now -- Miss George indicated she "noticed

1 there was a guy standing by the door pointing a
2 gun at them saying, 'This is a stickup. This is
3 no joke. Give me your wallets. Hurry, hurry,'"
4 correct?

5 A. Yes.

6 Q. And she further indicated that she assumed -- "She
7 did not see where the suspect went to but assumed
8 he ran to the east toward Silent Wood rather than
9 across the field that is there," correct?

10 A. Yes.

11 Q. Based upon the three interviews of Miss George,
12 first by Officer McAnally, second by Officer Drnek
13 at the hospital, and then the third by
14 Detective Scott, all that evening of the murder,
15 wouldn't you say it was reasonable based upon
16 those descriptions for the police to have
17 considered robbery a motivation for the crime?

18 MS. HAGY: Objection, form.

19 A. Well, they would consider robbery as one of the
20 motives. That's not what I wrote in the report --
21 I mean that's -- what I wrote in my report is
22 they considered exclusive, because there are
23 indications that there wasn't a robbery.

24 BY MR. IASPARRO:

1 Q. Well, the information they had was that it was an
2 attempted robbery that went wrong, went bad,
3 right?

4 MS. HAGY: Objection, form,
5 mischaracterizes evidence.

6 A. It could be a lot of things. And you're right, it
7 could be an attempted robbery gone wrong. It
8 could be a staged robbery with the intent of
9 revenge. It could be a number of things. They
10 have to keep an open mind. So for them -- this
11 does not support that these statements by George,
12 which, you know, she's a survivor, et cetera, and
13 you have to ask -- when I read that statement
14 about her ex-husband, I thought, well, okay.
15 We're going to run with that lead and close that
16 door, right? They didn't even get his name. So
17 the answer is of course they would consider all
18 the possibilities. That's what I wrote about
19 before I started commenting on the case in
20 particular, consider all the possibilities. This
21 is an indication of closed blinders; it's going to
22 be robbery gone bad, this is the way we're going
23 to pursue this case.

24 BY MR. IASPARRO:

1 Q. Wouldn't it be fair to presume that Miss George
2 would have recognized the physique and mannerisms
3 of her ex-husband if he in fact was her -- if the
4 suspect was in fact her ex-husband, don't you
5 think she would have recognized that and told the
6 police, "Hey, I think my ex-husband did it"?

7 MS. HAGY: Objection, form, incomplete
8 hypothetical.

9 A. That's a classic excuse for why he didn't follow
10 the lead. "Well, she would have told me." No.
11 She did say something. She's the one. That --
12 that report about her ex-husband is from her in a
13 very significant circumstance. And she gave that
14 lead. And for them to ignore it is -- it's
15 just -- you just don't do that. But can they
16 think, well -- of course they would ask her,
17 "Well, you gave us a statement about your
18 ex-husband, but why wouldn't you recognize that
19 immediately that it wasn't him or was him?" But
20 they never talked to her about it, and according
21 to the record.

22 BY MR. IASPARRO:

23 Q. It's fair to say that as of April 2, 1993, the
24 detectives and officers working the investigation

1 had no idea that Patrick Pursley was perhaps a
2 suspect in the case, right?

3 MS. HAGY: Objection, form, calls for
4 speculation.

5 A. That's interesting. At the time of the murder,
6 all possibilities -- all suspects are in your
7 brain. And that includes who could have done this
8 based on your personal experience as a detective
9 and the neighborhood and the area you're working
10 and et cetera. So you keep that all in mind, but
11 they did not know -- it was a whodunit at the time
12 of the murder.

13 BY MR. IASPARRO:

14 Q. And Patrick Pursley's name did not surface until
15 two months later, right, June 8 --

16 MS. HAGY: (Interrupting) Objection.

17 A. Are you -- I did not assume that his name
18 surfaced -- did not surface until two months
19 later. I never assumed that based on what I know
20 about how detectives work. I could be more
21 precise if you like.

22 BY MR. IASPARRO:

23 Q. Well, have you reviewed any evidence that
24 indicates that Patrick Pursley was developed as a

1 suspect in this case prior to June 8, 1993?

2 MS. HAGY: Objection, form.

3 A. I recognize that the record does not provide any
4 other information of how this thug who is in
5 trouble suddenly surfaces as a call in to
6 Crime Stoppers. And then everything moves within
7 hours after that. So that's it. There is nothing
8 in the record at all.

9 BY MR. IASPARRO:

10 Q. Do you have any information as you sit there right
11 now, Mr. Clark, that Patrick Pursley was developed
12 as a suspect but believed to be responsible for
13 the murder of Andrew Ascher before June 8, 1993?

14 MS. HAGY: Objection, form.

15 A. There is nothing in the record before June 8.

16 BY MR. IASPARRO:

17 Q. And any suggestion that anybody considered
18 Patrick Pursley a suspect before June 8, 1993,
19 would be total speculation on your part, correct?

20 MS. HAGY: Objection, form.

21 A. It is not total speculation because I know the
22 possibilities of manipulating, how he gets
23 involved in the case occur in other investigations
24 I've dealt with and commented on in other cases.

1 So Windham's appearance on June 8 is very
2 interesting, the circumstances, what he says and
3 how they move on from there and have not -- have
4 not provided ballistics evidence until Windham
5 shows up. That's all that I could comment on -- I
6 comment on it in the report, and that's the best I
7 could do because there is no documentation, and
8 they build a fire wall between him and bringing
9 him into the case.

10 BY MR. IASPARRO:

11 Q. I don't understand what you mean by that, a fire
12 wall, what does that mean?

13 A. That Windham is a known informant and is working
14 behind the scenes and developing information, and
15 then when they need him to surface in the
16 investigation for -- in order to get their
17 warrants, they identify him at that point as a
18 call-in citizen to Crime Stoppers.

19 Q. What is your evidence of that, sir?

20 A. None.

21 MS. HAGY: Objection.

22 THE WITNESS: There is no evidence.
23 That's exactly what I told you, that it -- what
24 you have to consider as a detective bureau

1 commander and what I saw -- see other units have
2 done, and that's why I put all that commentary
3 before I start talking about the case, that
4 Windham -- you cannot back away from -- none of
5 the physical evidence, the key physical evidence,
6 the slugs and the casings, were ever sent to the
7 lab. It is only when Windham shows up. Now we
8 go to the lab. And we go to the gun store and
9 et cetera. Okay. Windham -- but this all happens
10 because Windham happens to read about it in the
11 papers and calls in? I took it for what it was.
12 That's what's in the record.

13 BY MR. IASPARRO:

14 Q. Well, why would they wait two months to have, you
15 know, Mr. Windham, the known informant, if you
16 will, provide this information and why didn't they
17 solve the case in two days? Doesn't make any
18 sense.

19 MS. HAGY: Objection, form,
20 argumentative.

21 A. Well, you're assuming that Windham knows about the
22 murder and is set on it or is telling them about
23 it and they're not working on it. I don't know
24 when Windham originally shows up, if he does at

1 all. I took it from my report that their reports
2 say he shows up on the 8th in their investigation.

3 And --

4 BY MR. IASPARRO:

5 Q. (Interrupting) Let me ask you this, Mr. Clark:

6 You are not aware of any evidence that that's
7 wrong, are you?

8 MS. HAGY: Objection, form.

9 BY MR. IASPARRO:

10 Q. In other words, you don't -- if you know of any
11 evidence, please enlighten me that Marvin Windham
12 provided any information before June 8, 1993. Are
13 you aware of any?

14 A. I think I answered it.

15 Q. No, you didn't.

16 A. About three times. No, there is no such evidence.

17 Q. Okay.

18 A. And you asked me how would I know. It's not --
19 and you said that's speculation. No, it's not.
20 It's based on what I've seen other detectives do
21 and how they manage cases when they have a focus
22 and don't -- and it closes all possibilities
23 because they focus.

24 Q. What is your evidence that any detective

1 involved in this investigation was focused on
2 Patrick Pursley prior to June 8, 1993?

3 MS. HAGY: Objection, form,
4 mischaracterizes prior testimony.

5 A. There is none.

6 BY MR. IASPARRO:

7 Q. With respect to Officer Drnek's report, which is
8 Exhibit 3 -- I'm sorry. Now I'm going to show you
9 an exhibit I haven't shown you yet. This has been
10 marked as Exhibit 5, which is Officer Drnek's
11 second report, COR and Getty 80 and 81. And you
12 reviewed this, correct, Mr. Clark?

13 A. Yes. That's what I referenced.

14 Q. All right. And that's the report where Mr. Drnek
15 supplements his prior report and provides the
16 information relating to what Becky George said
17 about her ex-husband, correct?

18 A. Yes.

19 Q. All right. Is there anything in this report that
20 you've reviewed that indicates that Becky George
21 reported to Officer Drnek any prior physical abuse
22 or altercations with her husband?

23 MS. HAGY: Objection, form.

24 A. There's nothing about physical abuse. There's

1 mental torture.

2 BY MR. IASPARRO:

3 Q. Your report also indicates that the Rockford
4 Police Department did not pursue alternate
5 suspects, including an individual observed by the
6 Dumpster the night of the murder, correct?

7 A. Correct.

8 Q. What makes you believe or conclude that the police
9 failed to investigate that lead?

10 MS. HAGY: Objection, form.

11 A. Let me just -- I did address that in . . . I'll
12 give you a . . .

13 BY MR. IASPARRO:

14 Q. I'll get to that point. It's Page 11 of your
15 report, which is in front of you on the
16 screen. The second bullet point says, "The
17 yet-unidentified person observed hiding behind the
18 Dumpster, who possibly lived in the apartments
19 down the street." And then you reference,
20 "Pages 33 and 34 below," which I'll scroll to now,
21 okay?

22 A. Sure.

23 Q. All right. At Page 33 you have a section titled,
24 "Man Hiding by Dumpster Observed by David Bodell,"

1 correct?

2 A. On Page 33, yeah. That's what I was trying to --
3 couldn't remember the page. So that's the
4 commentary about the Dumpster, person at the
5 Dumpster that . . .

6 Q. And by your own description that person that
7 Mr. Bodell saw was never identified, correct?

8 A. That person was never identified.

9 Q. Are you aware of any evidence anywhere in the
10 record that you've reviewed that the person who
11 Mr. Bodell saw behind the Dumpster was in fact the
12 person who killed Andrew Ascher?

13 MS. HAGY: Objection, form.

14 A. The -- it was not -- he was not witnessed to
15 commit the murder. Is that what you're asking me?
16 He was present and ran away, and he left
17 impressions in the snow. And there should have
18 been a general briefing, at least we're looking
19 for a possible suspect described as such and such
20 that was seen at the scene of the murder.

21 BY MR. IASPARRO:

22 Q. Well, that was included in the reports, correct?

23 MS. HAGY: Objection, form.

24 A. It's in the reports, but there's nothing about

1 what they did to follow up or inquire or try to
2 locate that person. That was my commentary. That
3 was a lead.

4 BY MR. IASPARRO:

5 Q. Okay. What should they have done to follow up on
6 an unidentified person that nobody knew about?

7 MS. HAGY: Objection, form,
8 argumentative.

9 A. Well, at the very least they would ask in the
10 neighborhood if that kind of description matched
11 anybody that they knew of, and then they would
12 seek that person out, locate him and ask him,
13 "Were you there?" that kind of thing.

14 BY MR. IASPARRO:

15 Q. You understand David Bodell described that person
16 that he saw crouching behind the Dumpster to have
17 been crouching on the side of the Dumpster
18 opposite from where those tennis shoe prints were
19 found, correct?

20 A. Yes. I read his deposition.

21 Q. And there's no indication anywhere that that
22 person was in any way involved in the Ascher
23 murder, correct?

24 MS. HAGY: Objection, form.

1 A. To the contrary. He's right there at the time.
2 He's seen right there hiding at the time of the
3 murder when the youngster comes out to smoke a
4 cigarette and sees it and hears it.

5 BY MR. IASPARRO:

6 Q. For all you know, that could have been
7 Patrick Pursley, right?

8 MS. HAGY: Objection, form.

9 A. Yes, it could have been him, but that would then
10 belie Rebecca's commentary.

11 BY MR. IASPARRO:

12 Q. You're also critical of the Rockford Police
13 Department for not pursuing Antrone and Vantrele
14 Turner as potential suspects. That --

15 A. (Interrupting) Yeah. That's a big one, because
16 that night there was -- there was -- they were
17 stopped, and a call went out for -- I took it from
18 one of the beat officers, "I got somebody you need
19 to come and see and talk to."

20 Q. And I'm putting on your screen what's been marked
21 as Exhibit 6, which is COR and Getty 65 through
22 69, Officer Kevin Rice's report relating to that
23 information and Mr. Turner, correct?

24 A. Correct.

1 Q. And the information that you reference actually
2 came from an officer from the Loves Park Police
3 Department, Officer Lynde, which he passed along
4 to the Rockford PD, right?

5 A. Right.

6 Q. Officer Rice's report is five pages in length, and
7 he in fact did interview each of those persons
8 listed in the report, including both Turner
9 brothers, correct?

10 A. Yes.

11 Q. And he interviewed four people whose stories were
12 consistent about what they did that night, which
13 was to go off to a motel in Loves Park, Illinois,
14 correct?

15 MS. HAGY: Objection, form.

16 A. The report is -- I don't -- I don't contest
17 anything said in the report.

18 BY MR. IASPARRO:

19 Q. All right. Officer Rice searched the car that the
20 Turner brothers were in, right?

21 A. Yes.

22 Q. Go back up to Page 13 of your report where you
23 talk about the Turner brothers. In your report
24 you suggest that the Rockford Police Department's

1 failure to pursue alternate suspects was due to
2 the detectives having "identified a different
3 suspect they like and who they pursued with tunnel
4 vision to the exclusion of others," correct?

5 A. Yes.

6 MS. HAGY: Objection.

7 THE WITNESS: That's -- you read from
8 the last bullet point.

9 Go ahead. I'm sorry.

10 BY MR. IASPARRO:

11 Q. As we've already established, Mr. Pursley was not
12 developed as a suspect until two months later,
13 correct?

14 MS. HAGY: Objection, form.

15 A. Well, in the record he was identified as a suspect
16 on the 8th, two months later.

17 BY MR. IASPARRO:

18 Q. The third bullet point underneath your Turner
19 brothers section says, "It is noteworthy that
20 after the Ascher homicide, Antrone Turner was
21 involved in a string of robberies that closely
22 resembled the Ascher crime, including robberies
23 and assault of persons exiting their vehicles."
24 Do you see that?

1 A. Yes, I do.

2 Q. Do you find it noteworthy that Mr. Pursley robbed
3 a bank shortly after the Ascher murder with a
4 handgun?

5 A. You want me to assume he robbed a bank? I
6 accepted in the record that he was a prime suspect
7 for robbing a bank.

8 Q. And you understand that Samantha Crabtree gave a
9 statement implicating him and herself in a bank
10 robbery, to which she pled guilty, right?

11 MS. HAGY: Objection, form,
12 mischaracterizes the evidence.

13 A. Yes.

14 BY MR. IASPARRO:

15 Q. And when I asked Mr. Pursley about having robbed
16 the First Bank North with Miss Crabtree, you
17 understand he asserted his Fifth Amendment
18 privilege, right?

19 A. Yes.

20 Q. Do you find it noteworthy that Mr. Pursley is also
21 accused of having robbed a Burger King after the
22 robbery -- or after the murder?

23 A. The Burger King robbery is in the record, and I
24 commented on it.

1 Q. Do you think it was appropriate for the Rockford
2 Police Department to consider other crimes that
3 Mr. Pursley was alleged to have been involved in
4 in analyzing the possibility that Mr. Pursley was
5 a suspect for the Ascher homicide?

6 A. Of course. That also applies to the Turner
7 brothers and others, I'm sure. Of course.

8 MR. IASPARRO: Mr. Clark, I need a
9 couple-of-minute break, if you don't mind.

10 THE WITNESS: This is perfect for me,
11 so . . .

12 MR. IASPARRO: Why don't we take five
13 minutes.

14 THE WITNESS: Five minutes would be
15 good. Thank you.

16 (A brief recess was taken.)

17 MR. MOGBANA: The city is ready.

18 MR. HUOTARI: I'm back, too, Michael.
19 Thanks.

20 MR. IASPARRO: Back on the record.

21 BY MR. IASPARRO:

22 Q. Mr. Clark, I have on the screen in front of you,
23 scroll down to Page 14 of your report, in
24 particular the section titled, "Failure to Timely

1 Submit the Firearm Evidence." Do you see that?

2 A. Yes.

3 Q. And the first sentence says, "RPD deviated from
4 commonly-accepted practice by failing to send the
5 ballistics evidence for immediate processing." My
6 question for you is where is the commonly-accepted
7 practice which you referred to in that sentence
8 requiring the sending of ballistics evidence for
9 immediate processing documented, where could I
10 find that?

11 A. That's why I cited the -- that's Item No. 7 on
12 Page 3, "Criminal Investigations." There's
13 also -- let me . . . I cited O'Hara's work and
14 the Rockford department's own procedures on the
15 value of physical evidence. I quoted that in the
16 report. So -- and I don't think it's -- just on
17 the other side of the coin -- you'll find any, any
18 competent publication or procedural manual that
19 says to hold on to physical evidence that may
20 provide leads until you have a suspect.

21 Q. What do you mean by immediate processing, what
22 does that mean?

23 A. Well, it means that when you get it and of course
24 there's -- I'm going to use the term harvest,

1 whatever the crime scene yields, and there's
2 precise ways to -- and it's always improving -- to
3 secure it, to document it, secure it, create a
4 chain of evidence, not to contaminate it and
5 then -- but get it quickly to a source that can
6 provide investigative leads. And to not do that
7 just, you know -- it influences the results of the
8 investigation. In this case we know the Welty, if
9 you take his testimony, said, "Just by looking at
10 the casings, I can narrow it down to three makes
11 of gun." Well, there's a lot of 9mms out there
12 and -- but he says it's probably going to be a
13 Taurus because that's per the -- the affidavit for
14 the search warrant. He says, "It's probably one
15 of three but most likely a Taurus." Well, that's
16 huge. And they didn't have that information for
17 two months? That's enormous.

18 Q. You're not suggesting that Mr. Welty's analysis
19 would have somehow been different on April 2,
20 1993, than it was in June of '93, are you?

21 A. No, I'm not saying that because his -- his
22 statement stands -- I mean it is what it is.
23 Welty has history of employment. He's given
24 testimony before. He indicated in his deposition,

1 et cetera, that, "This was the basis of my -- my
2 looking at what I came up with, and I never did a
3 match as far as the slug to the -- to the Taurus
4 that was -- eventually came our way, and -- but I
5 verified it, but I did verify it by the -- when I
6 looked at the -- " what's his -- there's a -- just
7 a minute -- Gunnell, when Gunnell made the match.
8 And all of that is questionable, by the way. But
9 I'm talking about the investigation as from the
10 time of the murder to the time they claim it's
11 solved and charge Pursley with murder. So -- and
12 there's just -- I could not -- I looked hard and I
13 reviewed why would they hold on to this for two
14 months. And the only connection to getting it to
15 the lab was that Windham shows up.

16 Q. Jack Welty from the state police crime lab
17 indicated based on his preliminary analysis that
18 he believed the spent cartridge cases were likely
19 fired by a Taurus 9mm firearm, right?

20 A. Yes. That's what he says, and that's what's in
21 the affidavit for the search warrant.

22 Q. Right. And there's no reason not to believe that
23 that's in fact what Welty said, right?

24 A. Well, Welty himself says that's what he said. So

1 I mean that's all I can take, that he said it.
2 And he says it under oath as well as apparently
3 saying it verbally to Forrester.

4 Q. And I think you may have said this earlier, but
5 you're not suggesting or offering an opinion here
6 that Jack -- the results of what Jack Welty did
7 would have been different in April than they were
8 in June, 1993, right?

9 MS. HAGY: Objection, form.

10 A. Well, Welty has never recanted his opinion.
11 That's all I can tell you.

12 BY MR. IASPARRO:

13 Q. I've put up on the screen in front of you a
14 document which has been marked as Exhibit 7 for
15 purposes of today's deposition. This is COR and
16 Getty 139 through 156. You've referenced the
17 search warrant and the affidavit in support. Did
18 you review this document, sir?

19 A. Yeah. I considered a key summation early in time
20 of what Forrester says they have thus far.

21 Q. Okay. And in the affidavit itself, which I'll get
22 to, there's a search warrant, then there's a
23 complaint for search warrant, and then affidavit
24 in support of search warrant, which starts on

1 Page 7 of the document, correct?

2 A. Right. And that's the document I'm referring to.
3 He gives -- he lists out other crimes, et cetera.
4 He lists out the rationale for the search warrant.

5 Q. And your understanding was this, as it says, was
6 an affidavit in support of the search warrant for
7 Mr. Pursley and Miss Crabtree's apartment,
8 correct?

9 A. Yes.

10 Q. This was not in support of any sort of arrest
11 warrant for Mr. Pursley, correct?

12 A. Correct.

13 Q. And that there's a distinction between an arrest
14 warrant and a search warrant; you understand that,
15 right?

16 A. Yes, I do.

17 Q. All right. And as we've established, I think, the
18 information that Mr. Welty provided regarding his
19 preliminary analysis of the crime scene evidence,
20 in particular those cartridge cases, that in fact
21 was included in Detective Forrester's search
22 warrant affidavit, right?

23 A. Right. Last page on the second -- second-to-last
24 page it's there.

1 Q. There we go. Page 11 of the affidavit, Page 17 of
2 the exhibit. So it would be Paragraph 12 of
3 Detective Forrester's affidavit, correct?

4 A. Correct.

5 Q. The information provided on June 8, 1993, by
6 Marvin Windham, based upon your review of the
7 record, your understanding is that that was
8 provided anonymously via a Crime Stoppers tip,
9 correct?

10 A. Originally, yes.

11 Q. All right. So between June 8, 1993, and June 12,
12 1993, do you have any indication that the Rockford
13 Police Department or any members of the department
14 who were involved in this investigation knew that
15 Marvin Windham was in fact the person who provided
16 that Crime Stoppers information on June 8, 1993?

17 MS. HAGY: Objection, form.

18 A. There's nothing in the record.

19 BY MR. IASPARRO:

20 Q. Okay. First time that Marvin Windham is
21 identified as the person who provided that
22 information is June 12, 1993; is that right?

23 A. Identified in the record, yes.

24 Q. And my question is do you have -- are you aware of

1 any evidence that indicates that any members of
2 the investigatory team knew who Marvin Windham was
3 between June 8, 1993, and June 12, 1993, in other
4 words, that it was Windham who provided the
5 Crime Stoppers information?

6 MS. HAGY: Objection, form, asked and
7 answered.

8 A. There's nothing in the record.

9 BY MR. IASPARRO:

10 Q. Okay. And the information that Mr. Windham
11 provided via the Crime Stoppers tip was included
12 in Detective Forrester's search warrant affidavit,
13 correct?

14 A. Yes. He's identified as a informant.

15 Q. And I guess perhaps you anticipated my next
16 question. Nowhere in Detective Forrester's search
17 warrant affidavit did he identify that informant
18 by name, correct?

19 A. Right. And as you just brought up, Paragraph 6,
20 "On June 8, 1993, an unidentified, confidential
21 informant called."

22 Q. Well, what's the significance of that?

23 A. Well, you asked the question. They had -- and I
24 said according to the record, they had no -- in

1 the record they -- they do not identify Windham
2 until later.

3 Q. You're unaware of any evidence which indicates
4 they knew that it was Marvin Windham who provided
5 the June 8, 1993, Crime Stoppers tip until
6 June 12, 1993, right?

7 MS. HAGY: Objection, form, asked and
8 answered.

9 A. I have no information in -- as I search the
10 record.

11 BY MR. IASPARRO:

12 Q. Or from any other source?

13 A. No. I have -- the other sources that raise my
14 suspicions come from my experience and training
15 and working hundreds of cases where a detective
16 down the road says, "Hey, you guys are working the
17 Ascher murder. I've got a guy who will make a
18 statement for you."

19 Q. So my question is you're just speculating in that
20 respect, aren't you?

21 A. No. It's not speculation based on how this case
22 evolves and the very unique and to me suspicious
23 circumstances of Windham suddenly appearing in the
24 investigation as he does.

1 Q. The information provided by Marvin Windham on
2 June 8, 1993, was corroborated in large part as
3 indicated by Detective Forrester's search warrant
4 affidavit, correct?

5 MS. HAGY: Objection, form,
6 mischaracterizes evidence.

7 A. I think that needs a bit of a answer.

8 BY MR. IASPARRO:

9 Q. Well, let me break it down. Let me break it down.

10 A. I think I got it. Just let me respond and then
11 maybe parse it out. I want to be helpful. We --
12 the Burger King robbery, the bank robbery, the
13 fact that Rebecca's got two guns, one's a Taurus,
14 one's a Beretta, that's verified as far as there
15 was a bank robbery, there was a Burger King
16 robbery, she does have two guns and they are
17 Beretta and they are a Taurus. That's --
18 according to the record, Windham spouts off and
19 it's there, and they use it for the search
20 warrant. But it has nothing -- and then the
21 statements about the Ascher murder he alleges,
22 that's not in verified stuff. So that's -- the
23 thing that needs to be said here is when you're
24 talking to a person like Windham, who has now

1 become an informant, they have a big neon sign
2 across their forehead; what do I have to tell you
3 that's going to get me out of trouble? So -- and
4 that's the way you look at everything he says. So
5 I'll wait for the next question.

6 Q. Well, one, Detectives Forrester and Scott didn't
7 know who Marvin Windham was when they talked to
8 him on the phone on June 8, 1993, correct?

9 A. Yeah.

10 MS. HAGY: Objection, form,
11 mischaracterizes evidence.

12 THE WITNESS: I accepted that in the
13 record. "Look, this guy suddenly calls us, and,
14 by the way, he's -- he's really something, but he
15 calls us voluntarily and we talk to him." That's
16 the way the record reflects. And I took it for
17 what it was. And then I commented on how they
18 need to treat -- knowing finally who he is, how
19 they have to treat what he says.

20 BY MR. IASPARRO:

21 Q. Well, before they knew who he was. So based upon
22 the information they were provided on June 8,
23 1993, anonymously pursuant to that Crime Stoppers
24 tip --

1 MS. HAGY: (Interrupting) Objection.

2 MR. IASPARRO: I haven't even finished
3 the question, Lindsay.

4 MS. HAGY: Yes. Go ahead.

5 BY MR. IASPARRO:

6 Q. Based upon the information that
7 Detective Forrester was provided anonymously on
8 June 8, 1993, during that Crime Stoppers call,
9 they learned that a man named Patrick Pursley had
10 a girlfriend at the time and her name was Sam,
11 right?

12 A. Right.

13 Q. Yeah. And that was true, Samantha Crabtree was in
14 fact Patrick Pursley's girlfriend at the time,
15 right?

16 A. Well, they went out and put her under
17 surveillance. They verified a lot of things per
18 that statement that was in the record. Yes, they
19 verified it.

20 Q. Thank you. That's one of the things they
21 verified. They also verified that Patrick Pursley
22 and Samantha Crabtree lived at Woodlawn and
23 Ashland, right?

24 A. Yes.

1 Q. And they also verified that Mr. Windham, who at
2 that point was still anonymous, had provided
3 accurate details of the bank robbery which she
4 described, as you just --

5 MS. HAGY: (Interrupting) Objection.

6 BY MR. IASPARRO:

7 Q. (Continuing) -- that bank robbery actually
8 happened, right?

9 MS. HAGY: Objection, form, foundation,
10 mischaracterizes both evidence and prior
11 testimony.

12 A. Forrester lays all of that out I think in pretty
13 good detail in the warrant affidavit, but -- and
14 that Windham tells him about the bank robbery,
15 tells him about the Burger King and connects those
16 two events to Pursley and then also ties in the
17 murder to Pursley.

18 BY MR. IASPARRO:

19 Q. And included among that information was that
20 Mr. Pursley after the bank robbery had purchased a
21 black Honda, right?

22 A. Yes.

23 Q. And that in fact was observed in the driveway of
24 where Samantha Crabtree and Patrick Pursley lived,

1 right?

2 A. Yes.

3 Q. And then pursuant to the information provided
4 anonymously by Marvin Windham on June 8, 1993,
5 Rockford police detectives tracked down two ATF
6 forms showing that Crabtree had in fact purchased
7 two 9mm firearms, right?

8 A. Yes.

9 MS. HAGY: Objection, form.

10 BY MR. IASPARRO:

11 Q. One of them on May 20, 1993, after the bank
12 robbery, again consistent with what Marvin Windham
13 told Detective Forrester, right?

14 A. In the record, correct.

15 Q. And the other gun was in fact a Taurus 9mm
16 firearm, right?

17 A. Yes, it was.

18 Q. Do you have any information that Jack Welty
19 tailored his preliminary analysis and verbal
20 report to Detective Forrester that he thought
21 the crime scene cartridge cases were likely
22 fired by a Taurus 9mm because of something
23 Detective Forrester told him?

24 MS. HAGY: Objection, form.

1 A. There is nothing in Welty's testimony that
2 indicates, "I was told what to say." I think that
3 was the implication of your question, "I was told
4 what to say." So -- and as I said, in his
5 deposition and in his trial testimony, he's
6 never changed. There is no contemporary --
7 contemporaneous (sic) notations or reports about this
8 examination.

9 BY MR. IASPARRO:

10 Q. And you understand that at the time that
11 Jack Welty provided his preliminary analysis to
12 Forrester, the Taurus 9mm firearm had not yet been
13 recovered from Pursley's apartment, right?

14 A. According to the record, they had not recovered
15 the gun, but it was -- I think it's even less than
16 24 hours. They -- the casings go to Welty,
17 casings, according to the search warrant. Welty
18 says Taurus or a Beretta or Astra, and then they
19 go pick up the -- they do the search warrant and
20 pick up two guns, Beretta and Taurus.

21 Q. And when you say there was no contemporaneous
22 documentation of the information shared between
23 Welty and Forrester, that's not accurate, is it?
24 We've got this search warrant affidavit which was

1 contemporaneous.

2 MS. HAGY: Objection, form,
3 mischaracterizes evidence.

4 A. No. What you have is Welty -- and I read his
5 deposition. He said, "Look, all of a sudden I get
6 this call. I'm going on vacation and I hold it
7 up" or "I'm willing to hold it up. Well,
8 Forrester gives me these casings to take a look
9 at, and then I told him verbally there's no report
10 of that." Forrester writes about it in his
11 affidavit, and then he writes more months later.
12 But in the affidavit, that's the only place we
13 have it.

14 BY MR. IASPARRO:

15 Q. And the affidavit was sworn to under penalty of
16 perjury, right?

17 A. Well, that's Forrester, right. And Welty doesn't
18 write a piece of paper about received, looked at,
19 examined and, "This is my conclusion" and put it
20 into the master file for the homicide.

21 Q. But the affidavit itself in support of the search
22 warrant was sworn to under penalty of perjury, and
23 a judge accepted it in establishing probable cause
24 to search Pursley's apartment, right?

1 A. Well, sure, but that's not --

2 MS. HAGY: (Interrupting) Objection.

3 THE WITNESS: I'm talking about the way
4 you're supposed to document stuff, especially
5 physical evidence. But you're right. That --
6 this is the only place -- you know, that day where
7 we see, "Hey, I sent it to the lab." The lab guy
8 says it's this, this and gives it to the judge,
9 and the judge says, "Go get it."

10 BY MR. IASPARRO:

11 Q. And that's what they did, they went and got it,
12 right?

13 A. Well, that's an interesting thing, because they
14 missed it when they did the search, and it took
15 for Rebecca to show them where it was. And then
16 they don't document it other than some long-range
17 photograph that shows something like a box stuck
18 between a dresser and a wall. Yeah. I'm sorry.
19 But I mean I never saw such documentation of
20 recovery of evidence like that.

21 Q. We'll get to that in a minute, because I think you
22 skipped over Detective Houde's report, but we'll
23 get to that. Do you know what the practice was in
24 the Rockford Police Department in 1993 with

1 respect to taking notes and the writing of police
2 reports from those notes?

3 MS. HAGY: Objection, form, overbroad.

4 A. As I recall, I saw in the record that they thought
5 it was okay not to keep the notes in the master
6 file in the -- what we call the murder book where
7 the professional standard is -- and it goes back
8 to 1965 for me -- everything goes into the file
9 and is never taken out, never changed, and it's
10 contemporaneous. In other words, it's as it occurs
11 and unfolds, so -- but I understand that even
12 though they recorded, video recorded things at the
13 murder scene, they never video or audio recorded
14 any of the statements. They never -- especially
15 Samantha's -- Crabtree's stuff or Windham. And
16 they never kept notes that -- to -- for the --
17 that are the basis of their reports that they
18 eventually write.

19 BY MR. IASPARRO:

20 Q. But let me ask you a little bit about your
21 apparent criticism about the failure to audio or
22 video record statements from Marvin Windham and
23 Samantha Crabtree. You understand they both
24 testified before the Winnebago County grand jury

1 prior to Mr. Pursley being indicted, right?

2 A. Yes.

3 MS. HAGY: Objection, form.

4 THE WITNESS: Yes. They both -- there
5 was grand jury testimony.

6 BY MR. IASPARRO:

7 Q. Correct. And the grand jury testimony from
8 both Marvin Windham and Samantha Crabtree was
9 consistent with their written statements provided
10 in the investigation, right?

11 A. Generally, as I remember.

12 Q. So the suggestion that somehow this -- that their
13 statements weren't recorded, they actually were
14 transcribed just a few days after they were
15 initially provided, right?

16 MS. HAGY: Objection, mischaracterizes
17 both evidence and prior testimony, form.

18 A. There are no -- and I looked for it. There are
19 no recordings of the extensive hours-long
20 interrogation of Crabtree or Windham at all. And
21 there are written documents that in a -- in 1993
22 especially when you have the technology readily
23 available, it's -- I don't understand how it could
24 possibly be considered competent investigative

1 procedure.

2 BY MR. IASPARRO:

3 Q. In 1993 -- am I to understand that you're
4 testifying or suggesting that in 1993 it was
5 standard procedure for detectives at the
6 Los Angeles County Sheriff's Department to video
7 and audio record interviews of homicide suspects
8 or witnesses of homicides?

9 A. Audio record. I did it as a detective from the
10 time I was assigned. And I knew that was going on
11 in 1965 when I came on the department. I never
12 did an interrogation without recording it.

13 Q. Do you have any information, Mr. Clark, that any
14 of the detectives involved in the Ascher homicide
15 investigation -- and in particular I want to ask
16 you about Forrester, Scott and Schmidt -- that any
17 of them failed to include complete summaries of
18 what they did during the investigation in their
19 police reports?

20 MS. HAGY: Objection, vague.

21 A. I think if you look in particular -- and I comment
22 about Crabtree, Samantha Crabtree's experience and
23 what she has to say about it, that it's very
24 problematic that it was an accurate depiction of

1 what that interrogation was about.

2 BY MR. IASPARRO:

3 Q. And in terms of what Miss Crabtree had to say
4 about her talking to the police on June 10, 1993,
5 are you -- it seems to me that you're crediting
6 what Samantha Crabtree has indicated about what
7 happened that day.

8 MS. HAGY: Objection, form,
9 mischaracterizes prior testimony.

10 A. I think the best way to answer that is a comment
11 on Judge McGraw's observations of Crabtree and
12 Windham when he gives his ruling of innocence.
13 And I agree. There are lots and lots of problems.
14 And he talks about a certain lax of verification,
15 diligence, et cetera, and changes in testimony as
16 the case unfolds.

17 BY MR. IASPARRO:

18 Q. By Miss Crabtree, right?

19 A. Well, he comments on Windham and Crabtree both, as
20 I remember his -- his ruling. I have a copy of
21 it. I could go to it.

22 Q. It will speak for itself. So in terms of your
23 criticism of contemporaneous or failure to
24 contemporaneously document the June 8, 1993,

1 Crime Stoppers call, we can agree that
2 Detective Forrester did in fact document it in
3 his search warrant affidavit, correct?

4 A. Only that it --

5 MS. HAGY: (Interrupting) Objection,
6 form.

7 THE WITNESS: I'm sorry.

8 Only that it occurred. That --
9 that's -- he says that it occurred. There is
10 nothing in terms of a phone call in or a phone
11 record or recording of that call actually
12 occurring. It's just that it occurred. And I'll
13 wait for the next question.

14 BY MR. IASPARRO:

15 Q. Do you have any information that that call did not
16 occur? I mean the implication here is that
17 Forrester's making this up or he made it up back
18 on June 10, 1993; is that what you're saying?

19 MS. HAGY: Objection, form,
20 mischaracterizes prior testimony.

21 A. That's -- I just reference you back to Number --
22 the second paragraph. And the answer is
23 Forrester, who is the case ace, as a detective
24 trained 24 years, as I recall experience, knows

1 this contact by an alleged anonymous informant
2 must be documented to the nines because it will be
3 questioned. And the suspect I'm going to arrest
4 requires that information be included in the
5 investigative file. It's not there.

6 BY MR. IASPARRO:

7 Q. I just -- I don't understand, Mr. Clark. It is
8 documented in a sworn affidavit submitted to the
9 chief judge of the 17th Judicial Circuit, right?

10 MS. HAGY: Objection.

11 A. The affidavit speaks for itself, and it is a sworn
12 affidavit.

13 BY MR. IASPARRO:

14 Q. Mr. Windham's statement of June 12, 1993, was in
15 fact documented on June 12, 1993, by way of his
16 sworn statement -- or his written statement,
17 correct, signed written statement?

18 A. On the 12th.

19 Q. Yes. So I've pulled up what has been marked as
20 Exhibit 8, COR and Getty 247 to 249 -- or, I'm
21 sorry, 246 to 240 -- I'll get this right, 247 to
22 249. This is a copy of Marvin Windham's written
23 statement from June 12, 1993, correct?

24 A. Yes.

1 Q. And that is documentation of Mr. Windham's
2 statement from June 12, 1993; would you agree?

3 MS. HAGY: Objection, form.

4 A. That's what the document is. Exhibit 8 is
5 dated -- his signature dated 6-12-93.

6 BY MR. IASPARRO:

7 Q. Okay. And how much more contemporaneous could you
8 get than a signed written statement on the exact
9 day that he gave the statement?

10 MS. HAGY: Objection, form,
11 argumentative.

12 A. If that's the day he gave the statement, then it
13 is contemporaneous.

14 BY MR. IASPARRO:

15 Q. And you don't have any evidence that it's not the
16 day that Mr. Windham gave a statement, right?

17 A. That's the 12th. He allegedly called in on the
18 9th, or 8th or 9th.

19 Q. Right. We're talking about the 12th.

20 A. Talking about the 12th. That's the second
21 interview.

22 Q. You reviewed Marvin Windham's deposition
23 testimony, correct?

24 A. Yes, I did.

1 Q. And Marvin Windham testified 27, 28 years later
2 that in fact he gave this written statement on
3 June 12, 1993, right?

4 A. Yes.

5 Q. And there's really no dispute that he gave this
6 statement, is there?

7 A. I -- I never considered it into dispute.

8 Q. All right. We go back to your report. On
9 Page 17 of your report, you have a section titled,
10 "Windham was Unreliable, and His Statement Alone
11 Did Not Establish Probable Cause to Arrest
12 Pursley." Do you see that?

13 A. Yes.

14 Q. Let me ask you this: By characterizing Windham as
15 unreliable, aren't you in fact making a
16 credibility determination?

17 A. No. It's a professional per the -- and, by the
18 way, this is -- this has been -- it's -- it's been
19 agreed to, and I cited where it was other
20 detectives agreed that it was not probable cause
21 to arrest Pursley for the murder.

22 Q. Well, that's a little bit different than what you
23 say in your report, but we'll get into that in a
24 minute.

1 A. No. Sir, this -- this report's about the
2 arresting him for the murder and prosecuting him
3 for the murder. It's not about arresting and
4 prosecuting him for bank robbery or anything else,
5 the Ascher murder.

6 Q. I understand that. Do you have an understanding
7 that the probable cause to arrest Patrick Pursley
8 for the murder of Andrew Ascher was based solely
9 on information provided by Marvin Windham?

10 MS. HAGY: Objection, form.

11 A. That's the way it appears to me. Well, no. It's
12 in Samantha's Crabtree's statement. She gives
13 some -- makes a statement about him being there
14 and her in the car, so . . .

15 BY MR. IASPARRO:

16 Q. All right. Are you -- you're aware of the fact
17 that a circuit judge in Winnebago County issued an
18 arrest warrant for Patrick Pursley for the murder
19 of Andrew Ascher, right?

20 A. Yes.

21 Q. Do you know when that happened?

22 A. You know, I can't remember. It was -- he fled
23 when they tried to apprehend him on the 9th,
24 9th or -- it was on the 9th. Then it was like six

1 days later and there was a warrant for his arrest.

2 Q. Okay. If I represented to you that the arrest
3 warrant for Andrew Ascher for the charge of first
4 degree murder -- or, I'm sorry. Let me back up.
5 If I represent to you that the arrest warrant for
6 Patrick Pursley for the offense of first degree
7 murder of Andrew Ascher was issued by a circuit
8 judge in Winnebago County on June 11, 1993, do you
9 have any information to dispute that?

10 MS. HAGY: Objection.

11 Is this a hypothetical? Are you going
12 to show him something?

13 BY MR. IASPARRO:

14 Q. I'm asking you do you know when the arrest warrant
15 was issued.

16 A. As I sit here, I don't. But I don't -- I wouldn't
17 contest the date of the search warrant -- I mean
18 the date of the arrest warrant.

19 Q. Okay. We're going to -- search warrant was on
20 June 10, 1993. We've established that, right?

21 A. Correct.

22 Q. Okay. I will represent to you that the arrest
23 warrant was on June 11, 1993, okay?

24 A. All right.

1 MS. HAGY: Michael, do you have
2 something you can show him or say what you're
3 pointing to?

4 MR. IASPARRO: Lindsay, I'm
5 representing for the record that the arrest
6 warrant for Patrick Pursley for first degree
7 murder was issued on June 11, 1993, by
8 Judge Kennedy.

9 MS. HAGY: Do you have the document or
10 can you cite it?

11 MR. IASPARRO: It's part of the record.

12 MR. MOGBANA: I think this is just
13 wasting time. The witness already accepted that,
14 so let's move on.

15 MR. IASPARRO: Let me ask my questions,
16 okay?

17 MS. HAGY: Well, I can make my record,
18 also, and I would like to understand that these
19 facts are in evidence or if this is a
20 hypothetical.

21 THE WITNESS: I don't --

22 MR. IASPARRO: (Interrupting) Just
23 wait a minute. Let's satisfy Lindsay here. Just
24 wait a second.

1 THE WITNESS: Yeah. I don't think it's
2 in my material.

3 MR. IASPARRO: Well, I'm going to show
4 you because you in fact reviewed the information
5 which establishes this fact.

6 BY MR. IASPARRO:

7 Q. I'm going to show you what has been marked as
8 Exhibit 12, Document COR and Getty 222. You
9 reviewed that, right, Mr. Clark?

10 A. I did, and I have it in my material. I have
11 COR and Getty 222.

12 Q. All right. On -- this is a report drafted by
13 Detective Forrester dated June 11, 1993. And do
14 you see it says, "On Friday, June 11, 1993, this
15 case was reviewed with Assistant State's Attorney
16 D. Koski and State's Attorney P. Logli. They
17 authorized a charge of first degree murder. The
18 complaints were typed up and they were taken in
19 front of Judge Kennedy. I then signed the
20 complaints, and Judge Kennedy issued the warrant
21 and set bond at no bond." Do you see that?

22 A. I see it.

23 Q. All right. So the search warrant was conducted on
24 June 10, 1993, right?

1 A. The search warrant was June 10.

2 Q. Right?

3 A. Yes. The search warrant -- I'm sorry. The search
4 warrant was June 10.

5 Q. Okay. You understand that Miss Crabtree was
6 interviewed at the police department, gave her
7 written statement on that same date, June 10,
8 1993, right?

9 A. Yes.

10 Q. June 11, 1993, as we just established, the arrest
11 warrant for first degree murder is issued by
12 Judge Kennedy, right?

13 A. Correct.

14 Q. And it wasn't until the next day, June 12, 1993,
15 that Marvin Windham went on the record and
16 provided a written statement, right?

17 A. The next day Windham, yes.

18 Q. So the suggestion that probable cause was
19 based upon Marvin Windham's statement or
20 Marvin Windham's information doesn't make any
21 sense, does it, because Marvin Windham wasn't even
22 identified until the day after the warrant was
23 issued.

24 MS. HAGY: Objection, mischaracterizes

1 prior testimony.

2 A. In the record Marvin Windham is not identified
3 until the 12th, all right? But -- so I don't
4 contest a judicial finding. And my commentary was
5 that it -- to an investigator there is -- the
6 probable cause still did not exist. And I comment
7 on that a number of -- there's a number of
8 citations in the report that agreed with that,
9 that the probable cause didn't exist for the
10 murder.

11 BY MR. IASPARRO:

12 Q. You're basing that solely on the statement of
13 Marvin Windham, you're isolating the statement of
14 Marvin Windham, right? And that's not accurate
15 because the written statement of Marvin Windham
16 wasn't until one day after a judge determined
17 there was probable cause to arrest Patrick Pursley
18 for first degree murder, right?

19 MS. HAGY: Objection, form,
20 mischaracterizes prior evidence and prior
21 testimony.

22 A. The written statement in the record doesn't appear
23 until the 12th signed. And Rebecca Crabtree was
24 interrogated and made statements on the 10th.

1 That's all in the record.

2 BY MR. IASPARRO:

3 Q. I think you meant Samantha Crabtree, right?

4 A. I'm sorry. You're correct, Rebecca Crabtree.

5 MS. HAGY: Samantha.

6 THE WITNESS: Excuse me,

7 Samantha Crabtree. Sorry.

8 BY MR. IASPARRO:

9 Q. Well, are you aware of the fact that
10 Patrick Pursley was indicted by the Winnebago
11 County grand jury and charged with first degree
12 murder on June 23, 1993?

13 A. I am.

14 Q. All right. Do you know what information the grand
15 jury was provided in order to make its probable
16 cause determination?

17 A. There's the transcripts there, and there was
18 testimony by Windham and Crabtree both.

19 Q. Going back to your report, Page 17 at the bottom,
20 bullet point there reads, "Windham was obviously
21 biased and therefore an unreliable informant." Is
22 that an example of you not making any credibility
23 determinations, Mr. Clark?

24 MS. HAGY: Objection, form,

1 argumentative.

2 A. No. That's not a credibility statement. That's a
3 professional statement on Windham. We've talked
4 about Windham quite a bit, so I can plow that
5 ground again if you like.

6 BY MR. IASPARRO:

7 Q. You indicate that Mr. Windham may have been
8 engaged in an affair with Samantha Crabtree, and
9 then you cite the testimony that Samantha Crabtree
10 gave at Mr. Pursley's jury trial in 1994; is that
11 right?

12 A. Yes.

13 Q. Do you have any information, have you reviewed
14 anything in the record that any Rockford police
15 officer or detective was aware in June of 1993 of
16 any information from any source and whether true
17 or not that Windham and Crabtree engaged in an
18 affair?

19 A. There's no investigative reports, and there's no
20 commentary that it was attempt -- even his --
21 vetting him as reliable was ever accomplished, as
22 I would have expected be done.

23 Q. What I'm trying to understand is if that
24 information didn't come to light until ten months

1 later in April of 1994, how is it relevant to a
2 probable cause analysis made in June of 1993?

3 MS. HAGY: Objection, form,
4 argumentative.

5 A. Well, that -- that piece of information would not
6 be in 1993 obviously.

7 BY MR. IASPARRO:

8 Q. Why do you think the Rockford police detectives
9 working the Ascher homicide case sought to
10 corroborate the information that Windham provided
11 during the Crime Stoppers call?

12 MS. HAGY: Objection, form.

13 A. I didn't catch the first part of the question, why
14 did what?

15 BY MR. IASPARRO:

16 Q. Why do you think the Rockford police detectives
17 took the efforts they did to corroborate the
18 information that Marvin Windham provided during
19 the Crime Stoppers call on June 8, 1993?

20 MS. HAGY: Objection, form,
21 mischaracterizes evidence.

22 A. Why do I think they did?

23 BY MR. IASPARRO:

24 Q. Yes.

1 A. Well, because that's an investigative lead. They
2 didn't ignore all leads. And they -- this was --
3 this was glaring stuff that they could follow
4 through with.

5 Q. Some of those things we've talked about before,
6 the two firearms that Samantha Crabtree had
7 purchased, the fact that Samantha Crabtree was in
8 fact Patrick Pursley's girlfriend, where they
9 lived, that black Honda in the driveway, right?

10 A. Right.

11 Q. On Page 19 of your report, you conclude that
12 Mr. Windham was motivated for coming forward due
13 to a desire to collect some sort of financial
14 reward. Do you see that?

15 A. Well, he's a cocaine addict, and usually they need
16 money, and there was a \$2,700 reward for -- as
17 a -- to provide a tip. He collected it, by the
18 way. I understand he collected.

19 Q. Are you aware of any evidence in the record that
20 Mr. Windham knew about that award at the time that
21 he made that anonymous call on June 8, 1993?

22 MS. KEEN: I'm sorry, Michael. I
23 couldn't hear you. You broke up. Might have been
24 at my end. Can you just repeat that.

1 BY MR. IASPARRO:

2 Q. And my question was are you aware of any evidence
3 that Mr. Windham knew about the prospect of a
4 financial reward on June 8, 1993, when he made
5 that Crime Stoppers call?

6 MS. HAGY: Objection, form.

7 A. There's nothing about the Crime Stoppers call
8 other than what appears in Forrester's report or
9 his affidavit. And that's what I talked about in
10 terms of did he ask for the money there or where's
11 the documentation of the call. I think it's
12 common knowledge Crime Stoppers provides financial
13 rewards for tips.

14 BY MR. IASPARRO:

15 Q. And you reviewed the deposition testimony from
16 Marvin Windham, correct?

17 A. Yes.

18 Q. Do you recall him testifying that the reason he
19 came forward was because he was afraid of
20 Mr. Pursley?

21 A. No, I don't --

22 MS. HAGY: (Interrupting) Objection.

23 THE WITNESS: I don't recall precisely.

24 BY MR. IASPARRO:

1 Q. In the top paragraph on Page 19 here, you write,
2 "The detectives investigating this case could not
3 reasonably have relied on Windham's statement
4 unless every key fact was corroborated by good
5 quality evidence." Do you see that?

6 A. Yes.

7 Q. What do you mean by every key fact, which facts
8 are those?

9 A. Well, they're embedded in the bullet points, and
10 there's a lot of verification that could occur
11 there -- there in the bullet points.

12 Q. And the phrase "good quality evidence," is that a
13 term of art? What do you mean by that?

14 MS. HAGY: Objection, form,
15 argumentative.

16 A. Well, there's good evidence, and then there's
17 not-so-good evidence. They're categories. And
18 the prime evidence is physical. And even the
19 Rockford statement about physical evidence is
20 something -- and I agree. It's neutral, doesn't
21 take any side, it's -- doesn't lose its memory,
22 and it will tell you the truth. So you always
23 seek the very best evidence and you try to verify
24 everything that's said as best you can.

1 BY MR. IASPARRO:

2 Q. All right. This list of bullet points is what I
3 think you were just referring to, "Facts in
4 Windham's account were flat-out contradicted, were
5 inconsistent or could not be corroborated." Is
6 that what you were just referring to?

7 A. That's -- that was my answer to the question you
8 posed. I thought that was the best way to do it.

9 Q. First bullet point you're critical here, "Windham
10 claimed that Pursley told him Andrew and Rebecca,"
11 quote, "'said they weren't going to give him the
12 purse or wallet but just going to give him the
13 money and he shot him twice.'" Then you cite
14 from the trial testimony of Marvin Windham from
15 April of 1994, right?

16 A. Yes.

17 Q. How is trial testimony from a year after the
18 murder, ten months after Pursley's developed as a
19 suspect relevant to what the detectives would have
20 known or done between April and June of 1993?

21 MS. HAGY: Objection, form.

22 A. Well, it has to do with -- what you have is you
23 have a survivor of the homicide, Rebecca, and
24 she -- and she clearly says that -- that Ascher

1 wants to -- was willingly giving up the money.
2 And it's a -- Windham's statement, which he says
3 comes from Rebecca -- I mean from Crabtree,
4 differs from what actually occurred according to
5 Rebecca, the survivor. Now, I think what you
6 asked me is, well, it's been a year later. Is
7 that -- is that the question?

8 BY MR. IASPARRO:

9 Q. Yeah. The question was how is testimony from a
10 year later, 1994 at the jury trial, relevant to
11 what the detectives would have known or done in
12 April and June, 1993.

13 A. Because they would have verified that statement
14 that Windham says that Pursley says to him, I
15 guess what Rebecca accounts when the crime
16 occurred. And that's not a year later, and it's
17 not -- that's not an accurate statement of what
18 really happened when the shooting occurred.

19 Q. Your next bullet point you reference the
20 unemployment office employee who testified again
21 at the trial in April, 1994, right?

22 A. Right. So, now, this is the point. These things
23 should be verified at the time Windham says they
24 happened. That's not a year later. Windham says

1 Pursley says dah, dah, dah, but when they look at
2 Rebecca's statement, Rebecca George's statement,
3 that doesn't match what happened. And again
4 Windham says Pursley said he made this threat.
5 They could go and check it out. They don't. So a
6 year later it surfaces not a true statement by
7 Windham.

8 Q. Are you aware of the fact that Marvin Windham when
9 he first spoke to the police said that that
10 statement was made after Pursley hung up the
11 phone?

12 MS. HAGY: Objection, form,
13 mischaracterizes evidence.

14 A. Here's what I think was accurate: He first said
15 he heard Pursley swear at and threaten the person
16 in the unemployment office and tell the person on
17 the phone that he was going to start killing
18 peckers, dah, dah, dah. Okay. Now, when
19 eventually that is looked at and the testimony in
20 the trial and that's finally resolved at the trial
21 as Windham's false statement, he says, "I was
22 there. I heard this. On the phone, I heard him
23 on the phone." And the person on the other end of
24 the line says, "I don't remember that ever

1 happening. If it did, I would have documented
2 it." That's what I'm talking about.

3 MS. HAGY: We've been going for about
4 another hour. Do we want to take another short
5 break soon or . . .

6 MR. IASPARRO: I'm happy to take a
7 break.

8 Mr. Clark, how are you doing?

9 THE WITNESS: Well, I'd like a break.
10 The clock sort of got away from me.

11 And then maybe we can quickly, too,
12 decide after another hour a little lunch.

13 MR. IASPARRO: Sure.

14 THE WITNESS: But I'd like the five
15 minutes. Can we take it now?

16 MR. IASPARRO: That's fine.

17 THE WITNESS: Okay.

18 (A brief recess was taken.)

19 MR. IASPARRO: Everybody back?

20 THE WITNESS: Got it.

21 MR. POTTINGER: Here.

22 MR. MOGBANA: City's back.

23 MR. IASPARRO: Ready to go back on the
24 record, Mr. Clark?

1 THE WITNESS: Yeah. It's fine. We're
2 all good.

3 MR. IASPARRO: Okay.

4 THE WITNESS: Thank you for the break.

5 MR. IASPARRO: Sure.

6 BY MR. IASPARRO:

7 Q. We're on Page 20 of your report, Mr. Clark, and
8 I'm looking at the bullet point that begins, "The
9 reports from the Burger King robbery Windham
10 referenced say that witnesses described the robber
11 as white and with a white-sounding voice. If that
12 is true, Pursley cannot be confused with the
13 person who committed the Burger King crime. There
14 is no reason he would have told Windham that he
15 did." Did I read that correctly?

16 A. That's right.

17 Q. I'm going to show you what has been marked as
18 Exhibit 9, Schmidt, Bates stamped Schmidt 59
19 through 63. Did you review this report?

20 A. Yes, I did.

21 Q. Okay. And this is an incident report relating to
22 that Burger King robbery at 909 West Riverside
23 Boulevard that Mr. Windham referenced, correct?

24 A. Correct.

1 Q. And I'll direct your attention to Page 5 of the
2 report, in particular the last paragraph there.
3 You see where it says, "Mike and Cliff state they
4 could not tell if the suspect was black or white
5 as he wore a ski mask and had gloves on. However,
6 Ronald Nance stated he got a good look at the
7 suspect's face and said he saw white skin around
8 the suspect's eyes and believes from the suspect's
9 voice that he was a white male." Did I read that
10 correctly?

11 A. You did.

12 Q. So the fact of the matter is that two witnesses
13 said that they could not tell if the suspect was
14 black or white because he was wearing a ski mask
15 and had gloves on, right?

16 A. That's right.

17 Q. And one witness said he saw white skin around the
18 suspect's eyes and believed that from the
19 suspect's voice that he was a white male?

20 A. Yes.

21 Q. So going back to your report, contrary to what you
22 wrote at Page 20 of your report, that bullet point
23 we just referenced, multiple witnesses did not
24 describe the Burger King robber as white, only one

1 did, correct?

2 MS. HAGY: Objection, form.

3 A. Multiple witness -- the bullet point does not say
4 multiple witnesses. The report -- and I -- I hung
5 my attention on the last paragraph, by the way.
6 We have a white-sounding voice and a white skin
7 and two others that said they couldn't tell black
8 or white, one way or the other. But we have
9 visual evidence from the other that says, "I saw
10 around the ski mask and it's white." So I -- but
11 I parsed it. I said if it's true, then Pursley
12 could not be confused with the person who
13 committed the burglary, the Burger King crime, and
14 there was no reason that Pursley would say that he
15 did because he didn't do it. That was -- that
16 needed to be considered and investigated further,
17 resolved one way or the other and as a
18 contradiction of what Windham says Pursley told
19 him. Because all this is hearsay. It's Windham
20 saying, "By the way, that is what he told me."
21 And it doesn't -- doesn't iron out very well. I
22 think the call to the employment office is
23 particularly telling, but you will see in the next
24 bullet point I do acknowledge that there are

1 verifiable things that were verified.

2 BY MR. IASPARRO:

3 Q. I want to look now at the paragraph under the last
4 bullet point where you say, "Windham's statement
5 did not give probable cause to arrest and charge
6 Pursley with murder." We now know based upon the
7 line of questioning I asked you regarding the
8 arrest warrant that probable cause was not based
9 on Marvin Windham's written statement, correct?

10 A. I don't know what --

11 MS. HAGY: (Interrupting) Objection,
12 form, mischaracterizes the testimony.

13 THE WITNESS: I'm sorry.

14 MS. HAGY: Sorry, Roger. Go ahead.

15 THE WITNESS: I only know that the
16 judge considered enough probable cause to issue
17 the arrest warrant on that date that you showed
18 me, the 12th.

19 BY MR. IASPARRO:

20 Q. Right. And Marvin Windham had not yet been
21 uncovered or identified as of June 11, 1993,
22 right?

23 A. Well, I discuss that a lot, and that's -- in the
24 record he is not identified by name signing off

1 until the 12th.

2 Q. Okay. Assuming for the sake of argument,
3 Mr. Clark, that that in fact is true, then that
4 completely undercuts your point that the police
5 did not have probable cause to arrest based on
6 Marvin Windham's statement, right?

7 MS. HAGY: Objection, incomplete
8 hypothetical.

9 A. No. Because they had a statement from an alleged
10 confidential, not -- by the way, it's not citizen
11 informant calls Crime Stoppers. He's -- he's
12 couched as confidential informant. I don't know
13 how you can take a call in and then tag him with
14 the name confidential without knowing who he is.
15 Nevertheless, I took it that if all that is true,
16 the sequence of events that you just posed, then
17 they're using the unknown -- unidentified call in
18 to Crime Stoppers as the basis.

19 BY MR. IASPARRO:

20 Q. All right. The next section of your report that
21 is entitled, "RPD Did Not Disclose Information
22 About Benefits it Provided to Windham."

23 A. Yes.

24 Q. And you're critical about an incident that

1 occurred in November, 1993, between Mr. Windham
2 and his wife, correct?

3 A. Yes.

4 MS. HAGY: Objection, form,
5 mischaracterizes evidence.

6 BY MR. IASPARRO:

7 Q. And you would agree that November, 1993, was long
8 after Patrick Pursley was arrested for and charged
9 with the murder of Andrew Ascher, right?

10 A. Well, yeah. November comes after the murder and
11 the arrest. That's not long after, but it's
12 after.

13 Q. All right. That's also after June 23, 1993, when
14 Pursley was indicted by the grand jury for the
15 murder of Andrew Ascher, right?

16 A. I would agree.

17 Q. All right. And you've reviewed the report of
18 Mr. Windham's Crime Stoppers tip made anonymously
19 on June 8, 1993, his written statement from
20 June 12, 1993, his grand jury testimony from
21 June 23, 1993, his trial testimony from April of
22 1994, and his deposition testimony in this case
23 from October of 2019 and February of 2020, right?

24 A. Yes.

1 Q. And would you agree it's fair to characterize all
2 of those statements and testimony in relation to
3 Patrick Pursley's involvement in the Ascher murder
4 as consistent?

5 MS. HAGY: Objection, form,
6 mischaracterizes evidence.

7 A. I'd have to compare the -- the consistencies and
8 any inconsistencies other than what I've commented
9 for in the report. You're talking about
10 statements that Windham makes.

11 BY MR. IASPARRO:

12 Q. Let me ask you a question maybe a little more
13 generally. In terms of Marvin Windham indicating
14 that Patrick Pursley told him he was responsible
15 for the murder of Andrew Ascher, Marvin Windham
16 has been consistent on that since June of 1993,
17 right?

18 A. Yeah, he's been consistent. But this page is
19 about the benefits he receives for that
20 consistency.

21 Q. We're going to get there.

22 A. I'm sorry.

23 Q. We're getting there. Hold on.

24 A. Okay. Because that's the point of this piece of

1 my report.

2 Q. I know what point you're trying to make. Do you
3 know --

4 A. (Interrupting) No. I'm not trying to make any
5 point other than I just want to say this is the
6 purpose of that commentary.

7 Q. Do you know how the Rockford Police Department
8 detective bureau was organized and structured in
9 1993?

10 A. No. There's no organizational chart given to me.

11 Q. Are you aware of whether there was a dedicated
12 domestic violence unit at that time?

13 A. No.

14 MS. HAGY: Objection, form.

15 BY MR. IASPARRO:

16 Q. You don't know?

17 A. I don't know.

18 Q. Do you know whether it was unusual at that time in
19 1993 for detectives assigned to the Rockford
20 Police Department's violent crimes unit to follow
21 up on domestic violence incidents?

22 MS. HAGY: Objection, form.

23 A. Well, I would assume that there's -- it's
24 generally -- detective bureaus are generally

1 divided into crimes against persons and property
2 crimes, and then there's also a juvenile and a
3 narcotics section, piece typically. So I'm
4 assuming anything with violence would be just go
5 to the detectives that handle crimes against
6 persons.

7 BY MR. IASPARRO:

8 Q. I'm going to pull up what's been marked as
9 Exhibit 10, kind of blurry, but that's the way
10 we've got it. This is marked COR and Getty 1572
11 to 1576. Did you review this document?

12 A. Yes. I remember -- and this is -- I commented --
13 I think it's even cited in my report. If not,
14 the -- that 1,400 area is.

15 Q. And focusing in on Detective Forrester's follow-up
16 investigation of the domestic violence incident
17 which you reference in your report from
18 October 15 -- I'm sorry, November 15, 1993, and
19 we're looking now at the fifth page of the
20 exhibit, COR and Getty 1576. Do you see that?

21 A. Yes.

22 Q. My question is do you have any information other
23 than what is set forth in Detective Forrester's
24 report here about what was said between

1 Detective Forrester and Diane Windham on
2 November 18, 1993, regarding Ms. Windham's desire
3 to have Marvin Windham arrested for the
4 November 15, 1993, incident?

5 MS. KEEN: I think you said Diane,
6 Michael. You meant Liane.

7 MR. IASPARRO: If I said Diane, I meant
8 Liane.

9 A. Yeah. Well, I took it his wife. And there's
10 nothing that I recall.

11 BY MR. IASPARRO:

12 Q. Well, Detective Forrester's report says that
13 Ms. Windham said that she did not wish to have
14 Marvin arrested, right?

15 A. Yes.

16 Q. According to Detective Forrester's report, she
17 just wanted him to leave her alone, right?

18 A. Yes.

19 Q. Which according to the report, Detective Forrester
20 indicated he communicated to Marvin?

21 A. Yes.

22 Q. So going back to your report, your discussion
23 about Mr. Windham being Forrester's witness, as
24 you characterize him, and the suggestion that

1 Detective Forrester encouraged Ms. Windham not to
2 pursue charges against Marvin Windham for the
3 November 15, 1993, incident, you're speculating
4 there, right?

5 MS. HAGY: Objection, form.

6 A. It's more than speculation. It's what I see often
7 when a linchpin informant or linchpin witness --
8 that's my term -- gets in trouble and you really
9 need his or her cooperation to be successful in
10 the prosecution.

11 BY MR. IASPARRO:

12 Q. Do you know what, if anything, Detective Forrester
13 told the Winnebago County State's Attorney's
14 Office about this November 1993 domestic incident
15 between Marvin Windham and his wife?

16 A. My information was he never disclosed it. He kept
17 it to himself.

18 Q. Well, how do you know that?

19 A. I don't, other than I couldn't find anything in
20 the record, and so I wrote assuming that the state
21 attorney would be -- would comply with the
22 requirement to turn over all information regarding
23 Windham, there is no evidence that Forrester
24 turned this information over to the state

1 attorney.

2 Q. And what's your basis to render an opinion that
3 Detective Forrester had an obligation to turn over
4 any information regarding this domestic incident
5 to the state's attorney's office?

6 A. Thank you for that. Because this goes to the
7 detectives' required knowledge of Brady, which
8 they deny in their statements and depositions.
9 And that is part of my report here.

10 Q. That's all -- that's all presumed -- an entire
11 opinion presumes that there was in fact an
12 obligation to turn over this report pursuant to
13 Brady and its progeny, correct?

14 A. Yes, it does.

15 Q. And are you saying that there was an obligation
16 under Brady for Detective Forrester to have
17 disclosed this report to the state's attorney's
18 office?

19 A. Yes, I am.

20 Q. But you don't know if Detective Forrester
21 encouraged Ms. Windham not to pursue any charges,
22 do you? All we're going off of is what's in his
23 report.

24 A. You are correct.

1 Q. And you really don't know as you sit there today
2 whether or not the state's attorney's office knew
3 about this incident, do you?

4 A. I do not know. And if they did, they owed it to
5 the defense, and that would also be a Brady
6 violation.

7 Q. You're not a lawyer, are you, sir?

8 A. No. I'm a retired detective. I'm sorry.

9 Q. And when you say at the bottom of Page 21 that,
10 "Forrester was required to disclose Windham's
11 criminal activity to the prosecutor and the fact
12 that he intervened to resolve the matter short of
13 an arrest," you don't know if in fact that's what
14 happened, do you?

15 MS. HAGY: Objection, form.

16 A. I see that implicit in the reports.

17 BY MR. IASPARRO:

18 Q. But you're just speculating that that's what
19 happened.

20 A. No. It's not speculation. That's based on my
21 reading of the reports.

22 Q. How is it not speculation if you have to use a
23 word like implicit?

24 MS. HAGY: Objection, form.

1 A. Where did I use the word implicit?

2 BY MR. IASPARRO:

3 Q. About two sentences. You just testified --

4 A. (Interrupting) I said disclosing the information
5 isn't implicit, didn't I?

6 Q. No. My question was your conclusion that "the
7 fact that he interviewed to resolve the matter
8 short of an arrest," you're speculating that that
9 happened, right?

10 A. No. I said -- I already answered that question.
11 No. It's not a speculation. It's what I see in
12 the reports.

13 Q. You don't have any basis to conclude that
14 Detective Forrester made a criminal complaint
15 against Mr. Windham go away, do you?

16 MS. HAGY: Objection, form, asked and
17 answered.

18 A. Here's what I know: There was a call -- the wife
19 calls for help. She -- she prompts it. Now,
20 these are my words, "He beat me." The leading
21 investigator of this homicide responds to the
22 house where his linchpin witness is in trouble.
23 And she after calling says, "I really didn't want
24 you guys here, and I don't want you to do

1 anything," and he leaves. And then he doesn't say
2 anything to anybody. And he knows if I arrest
3 this man, he'll come and testify dressed in jail
4 garb in front of the jury. And that's a bit of
5 hyperbole, but that's basically it.

6 BY MR. IASPARRO:

7 Q. So let's break that down a little bit. The
8 incident itself happened on November 15, 1993,
9 when some patrol officers responded and talked to
10 Ms. Windham, right?

11 A. That's right. And they don't handle it. They
12 don't -- okay. I'll wait for the question.

13 Q. Well, I guess that's my point. Where you're going
14 is they didn't make an arrest that day, right?

15 A. No, they didn't.

16 Q. And they didn't swear out a criminal complaint,
17 get an arrest warrant for Mr. Windham, right?

18 A. No.

19 Q. It was three days later when Detective Forrester
20 went to follow up on that report, and according to
21 his report, Ms. Windham indicated she just wanted
22 to be left alone, she didn't want him arrested,
23 true?

24 MS. HAGY: Objection, form.

1 A. I only know what's in the report. Forrester --

2 BY MR. IASPARRO:

3 Q. (Interrupting) That's right.

4 A. (Continuing) -- doesn't say anything further in
5 his trial testimony.

6 Q. And on Page 21 of your report when you say, "This
7 is an obvious violation of Brady for which
8 Forrester is responsive," or responsible, you
9 would agree that's a legal conclusion you are not
10 qualified to make, right?

11 MS. HAGY: Objection, form.

12 A. I'm not qualified as a lawyer. I'm qualified as a
13 police -- a former police officer, a detective,
14 and a detective bureau commander as I would
15 require and insist that such disclosures be made.

16 BY MR. IASPARRO:

17 Q. Tell me what your understanding is about the
18 difference between a search warrant and an arrest
19 warrant, Mr. Clark.

20 A. Well, a search warrant is legal authority to enter
21 a location protected by the Fourth Amendment to --
22 to search for and seize evidence as indicated in
23 the warrant. An arrest warrant is the
24 authorization to seize an individual for a crime

1 and book them into custody.

2 Q. During the course of your law enforcement career,
3 how many search warrants affidavits did you draft?

4 MS. HAGY: Objection, form.

5 A. Personally probably 50 NORSAT, but I approved --
6 read and approved and authorized ten a month,
7 which would be 120 a year for the five years, so
8 that would be over 700 search warrants as a NORSAT
9 commander.

10 BY MR. IASPARRO:

11 Q. And in terms of those 50 which you indicated you
12 drafted, were those instances in which you were
13 actually the affiant?

14 A. Correct. That's the way I took your question,
15 that I was the affiant about 50 times.

16 Q. So we're going to go back to Exhibit 7, which is
17 the search warrant, complaint for search warrant
18 and then the search warrant affidavit. Would
19 you agree that the purpose of the affidavit,
20 Detective Forrester's affidavit in support of the
21 complaint for search warrant, was to establish
22 probable cause to allow the detectives to search
23 Mr. Pursley's and Miss Crabtree's apartment?

24 A. I would agree.

- 1 Q. All right. It was not to secure an arrest warrant
2 for Mr. Pursley, correct?
- 3 A. That is a search warrant affidavit, not an arrest
4 warrant affidavit.
- 5 Q. Do you have any understanding that
6 Detective Forrester's search warrant affidavit
7 was used in any way to secure an arrest warrant
8 for Patrick Pursley?
- 9 A. Well, I think it was the results of the search and
10 the facts of this investigation, yeah.
- 11 Q. Well, those are different things. I'm talking
12 about the search warrant affidavit itself. Do
13 you know whether the affidavit was presented to
14 Judge Kennedy as part of the request for an arrest
15 warrant for Mr. Pursley?
- 16 A. As I -- no. I don't remember that detail, whether
17 or not it was.
- 18 Q. Okay. Going back to your report again, Page 23 at
19 the top there, in this paragraph, this section of
20 your report, you're discussing the search warrant
21 affidavit, correct?
- 22 A. Right.
- 23 Q. Okay. And at the top of Page 23 here where you
24 say, "The other alleged crimes listed in this

1 warrant do not provide probable cause to arrest
2 Pursley for the Ascher murder because they are
3 unrelated, dissimilar and do not indicate any
4 culpability for the Ascher crime," we agree that
5 the warrant you're talking about here was not
6 submitted in order to establish probable cause for
7 Mr. Pursley's arrest, right?

8 MS. HAGY: Objection, form.

9 A. Well, that's the purpose of the seizure, to
10 determine whether -- whether an arrest is
11 authorized or not based on the evidence seized.
12 But -- I'll wait for the next question.

13 BY MR. IASPARRO:

14 Q. Well, we've already established it was an
15 affidavit for a search warrant, right? So I guess
16 I'm just confused. Why are you talking about the
17 other alleged crimes listed in the search warrant
18 affidavit not providing probable cause to arrest
19 Pursley? That doesn't make any sense because the
20 warrant was for a search, not an arrest, right?

21 A. Well, right. So in that regard you're correct,
22 and I would agree. The point I was trying to make
23 is just because you throw in a -- in the affidavit
24 a bunch of crimes that we think is Pursley's and

1 then say if -- allege, better said, that somehow
2 these other crimes make him a probable cause
3 arrest for the Ascher murder, that's what that
4 paragraph is about. But I agree, the affidavit
5 was for search. And even Pirages says that
6 doesn't authorize the probable cause for arrest
7 for murder. That's in his deposition.

8 Q. Yeah. But you don't have any information that
9 the authorization to arrest Pursley granted by
10 Judge Kennedy was based upon anything having to do
11 with those other crimes, do you?

12 A. I do not take umbrage at Judge Kennedy's arrest
13 warrant. That's -- I -- he's a -- he's a -- he's
14 a judge, and he has the authority to issue arrest
15 warrants.

16 Q. Okay. The next paragraph here, "The warrant -- "
17 again we're talking about the search warrant
18 affidavit, as I understand it -- "also includes
19 false information, such as it says that the
20 Burger King robber was described as a
21 light-skinned black male." Do you see that?

22 A. Yes.

23 Q. And then you're critical. You say, "It is highly
24 improper to misstate evidence to obtain a search

1 warrant or for any law enforcement purpose,"

2 right?

3 A. Right. So they threw in the Burger King robbery
4 where it couldn't be Pursley if Pursley's black.
5 The alleged perpetrator is white. And that would
6 not be a proper allegation against Pursley to
7 justify a search warrant.

8 Q. Let's go to the search warrant itself.

9 A. Correct. I'm talking about the truthful -- the
10 affiant says everything in here is correct.

11 Q. I understand that. Let's look at Paragraph 4 that
12 the affiant swore to regarding that Burger King
13 restaurant. Page 4 of the search warrant
14 affidavit, so we're on COR and Getty 148 now, back
15 to Exhibit 7.

16 A. Yeah. Incidentally, it's interesting that
17 Paragraph 6 is -- he doesn't go chronologically.
18 If you go -- as he lists out those crimes. Then
19 all of a sudden we sort of leapfrog to the -- sort
20 of like it's an add-on, but he doesn't put it in
21 chronological order. It's just -- it's just an
22 observation of the warrant -- or the affidavit.

23 Q. All right. Let me get to my question here.

24 A. Sure.

1 Q. I got to find the right -- here it is, right in
2 front of me. All right. Right where we were at,
3 Paragraph 4 of the search warrant affidavit,
4 COR and Getty 148, Exhibit 7 for today's
5 deposition. "On April 15, 1993, at 5:39 a.m.,
6 Burger King restaurant located at 909 West
7 Riverside Boulevard, Rockford, Illinois, was
8 robbed. The robber was described as a white or
9 light-skinned black male wearing a blue ski mask,
10 dark navy blue zipper-front jacket, well-worn blue
11 jeans, brown work gloves and hard-sole work
12 shoes." Did I read that correctly?

13 A. Yes. You read it exactly as it's written.

14 Q. Okay. Well, that's a lot different than your
15 criticism here of Detective Forrester that he only
16 included information that the robber was described
17 as a light-skinned black male. That's not at all
18 what he said, is it?

19 MS. HAGY: Objection, form,
20 mischaracterizes evidence and prior testimony.

21 A. It is -- he wrote what he wrote.

22 BY MR. IASPARRO:

23 Q. That's my point, "The robber was described as a
24 white or light-skinned black male."

1 A. Yeah, and was identified as -- by a -- by a
2 witness who saw him as white and sounded white.
3 That's the -- that's the . . .

4 Q. He didn't misrepresent anything, he took it right
5 from the report, didn't he?

6 MS. HAGY: Objection, form,
7 mischaracterizes evidence and prior testimony.

8 A. He didn't include the exculpatory evidence in the
9 affidavit.

10 BY MR. IASPARRO:

11 Q. Okay. All right. We're moving down the report
12 now. The next section is entitled -- we're on
13 Page 23 of your report -- "Detectives Skipped
14 Basic Steps and Violated Policies During Their
15 Search of Samantha and Pursley's Apartment and Its
16 Discovery of the Supposed Murder Weapon."

17 A. Right.

18 Q. Were you provided as part of your review of this
19 case any photographs taken by Rockford police
20 detectives during the search warrant of
21 Mr. Pursley's and Miss Crabtree's apartment on
22 June 10, 1993?

23 A. I was. And it's listed -- let me see if I . . .
24 It's COR and Getty -- I think it's going to be the

- 1 very first file that I have on my flash drive are
2 the photographs of the apartment.
- 3 Q. All right. Next exhibit I'm going to show you
4 has been marked as Exhibit 13. This is COR and
5 Getty 345 to 355.
- 6 A. That's one of the photographs that I -- in the --
7 that were provided to me, a set of photographs
8 provided to me.
- 9 Q. All right. I'm going to scroll down to --
- 10 A. (Interrupting) There you go.
- 11 Q. (Continuing) -- COR and Getty . . .
- 12 A. Okay. So right there, this photograph, if you
13 stop.
- 14 Q. Yes.
- 15 A. You'll see right on the -- it's sideways, but
16 the -- on this photo below you'll see a black
17 object in between the wall and the dresser.
18 That's the gun case where the Taurus was found.
- 19 Q. Correct. And for the record that was COR and
20 Getty 350, the top photo. And I'm going to scroll
21 down to COR and Getty 351, the top photo as well.
- 22 A. That's it, yes.
- 23 Q. All right. And what you're describing is a black
24 gun case, if you will, between a dresser and a

1 blue wall, correct?

2 A. Correct.

3 Q. Do you have any basis to dispute Detective
4 Jeff Houde's testimony that the Taurus 9mm handgun
5 recovered from Mr. Pursley's apartment on June 10,
6 1993, was in the box depicted in those two
7 photographs we just looked at?

8 A. Well, that's what the record says. And the
9 commentary in my report is how incompetently that
10 was documented and -- and taken into evidence.
11 That's what my -- that is allegedly the gun case
12 and the Taurus inside that gun case.

13 Q. Okay. Putting aside your criticisms about
14 documentation of things for a moment, do you have
15 any reason to dispute Detective Houde's testimony
16 that the Taurus 9mm firearm was in fact in that
17 box?

18 MS. HAGY: Objection, form,
19 argumentative, mischaracterizes evidence.

20 A. The answer is I took it for the purpose of my
21 report that it -- that was it, that it was the gun
22 case and the Taurus was inside. I took it as a
23 part of my evaluation. I think -- and then I
24 commented on how fragile that conclusion is.

1 BY MR. IASPARRO:

2 Q. I'm going to show you another exhibit now,
3 Exhibit 14. This is COR and Getty 223, 224 and
4 225. Have you reviewed this report, Mr. Clark?

5 A. I did.

6 Q. All right. And the first page, can we agree this
7 is Detective Houde's processed evidence report
8 relating to the search warrant at 901 Ashland,
9 No. 2, on June 10, 1993?

10 A. Okay.

11 Q. Any reason to dispute that?

12 MS. HAGY: Objection.

13 Roger, do you need to see the whole
14 report? Are you okay?

15 A. No. I remember seeing this. You know, I found
16 myself constantly going back to COR and Getty 1
17 through 333, which is the investigative file. And
18 I -- I -- for the purpose of the report, I wrote
19 that that was the gun case and that was recovered
20 and that's where the Taurus was after Rebecca
21 showed them where it was. She had to show them
22 where it was.

23 BY MR. IASPARRO:

24 Q. You mean Samantha?

- 1 A. I'm sorry, Samantha. Forgive me. I won't make
2 that mistake again, Samantha Crabtree. They --
3 they've come out. She's waiting in the car, "It's
4 not in there." She says, "Yes, it is" and goes up
5 there and shows them.
- 6 Q. All right. Page 1 of Detective Houde's report
7 about halfway down, "A Taurus 9mm pistol and its
8 magazine," in parentheses, "which were in a gun
9 box," close paren, "and a plastic Beretta gun box
10 were recovered from between a dresser and wall in
11 the southeast bedroom." Do you see that?
- 12 A. Yes.
- 13 Q. Detective Houde in fact documented that in his
14 report, correct?
- 15 A. Yes, in the report.
- 16 Q. All right. Now we're going to go down to the
17 third page of his report, COR and Getty 225. This
18 appears to be a diagram of 901 Ashland, No. 2,
19 correct?
- 20 A. Correct.
- 21 Q. Which depicts where certain items of evidence were
22 recovered, right?
- 23 A. Yes.
- 24 Q. And if you see No. 4, it says, "Taurus 9mm and two

1 gun boxes," and then the actual No. 4 on the
2 diagram depicts that location between the dresser
3 and the wall in that bedroom, right?

4 A. Yes.

5 Q. All right. Going back to your report, Page 23,
6 the second paragraph under the section we've been
7 talking about, second sentence says, "The Rockford
8 Police Department's own evidence and property
9 handling procedures in 1993 provided that the
10 evidence and control section of the department
11 should assume responsibility for the transport, by
12 U.S. mail or other means, of evidence that is sent
13 to any outside agency for tests and/or evaluation
14 or to the court for representation in a court of
15 law." I was a little confused as to why you
16 referenced that particular procedure, Mr. Clark.
17 Can you help me out here?

18 A. It was intended to reinforce everything I said up
19 to this point, including the shell casings and
20 slugs. And this is where I decided, you know, to
21 plug in the references for the department's own
22 procedures plus other sources, so that's why it's
23 there. And as you can see in my report, I'm very
24 critical the way they conducted the search, the

1 way they documented the search, and I think they
2 mishandled the evidence.

3 Q. Are you under the impression that the two firearms
4 recovered from Mr. Pursley's apartment, the Taurus
5 and the Beretta, were not processed for
6 fingerprints?

7 A. Oh, I think it was processed for fingerprints.
8 Yes. That's before it went to the identification
9 section.

10 Q. Okay. Are you aware of the fact that one of
11 Miss Crabtree's prints was found on the Taurus?

12 A. Yes, I am aware of it.

13 Q. All right. And are you aware that one of
14 Mr. Pursley's prints was found on an ammunition
15 box which contained live 9mm rounds?

16 A. Yes.

17 Q. I show you Exhibit 16. This is COR and Getty 174,
18 and then the other two pages are COR and Getty 171
19 and 172. The Bates numbers are actually out of
20 order, but the report itself is correct for
21 purposes of the exhibit, Pages 1 through 3. Have
22 you reviewed this?

23 A. Yes, I did.

24 Q. All right. And can we agree that this is the

1 evidence report prepared by Detective Houde with
2 respect to the items recovered from 901 Ashland,
3 No. 2, on June 10, 1993?

4 A. Yes.

5 Q. And this is contemporaneous documentation of the
6 recovery of items during that search warrant,
7 correct?

8 A. Yes.

9 Q. Consistent with the police practices you describe
10 in your report?

11 A. Right.

12 Q. So when you say -- I'm going to go to Page 25 of
13 your report now, first full paragraph on Page 25.
14 When you write, "There is no contemporaneous
15 record of what actually existed in the apartment
16 when it was searched, whether a gun was found,
17 what condition it was in or what the serial number
18 was," that's not accurate, is it?

19 MS. HAGY: Objection, form,
20 mischaracterizes evidence, the report and prior
21 testimony.

22 A. If you go back to Page 24, I talk about how the
23 search and then the discovery of evidence should
24 be handled. And I think I've adequately

1 criticized on Page 25 the problems. And I said
2 there's only photographic documentation of the
3 Beretta. There is no photographic documentation
4 of the Taurus apart from the photo taken across
5 the room. Then the next paragraph, those are my
6 criticisms. So I would disagree that there's
7 contemporaneous commentary about the search.

8 BY MR. IASPARRO:

9 Q. Detective Houde's report, which is Exhibit 16, the
10 evidence report does in fact list the Taurus and
11 includes the serial number, right? I mean there's
12 no dispute that Taurus was recovered from that
13 apartment, right?

14 MS. HAGY: Objection, form,
15 mischaracterizes evidence.

16 A. Well, I think it could legitimately be disputed,
17 but according -- this is a report later on written
18 this is what we got, this is what it is. I'm
19 talking about how it's supposed to be handled,
20 because it does then open the door -- at the very
21 least criticism on mishandling of the key
22 evidence. I mean this -- we're talking about
23 murder weapon, okay, in a homicide.
24 That -- and it cannot be overstated.

1 Q. All right. I understand that. You --

2 MS. HAGY: (Interrupting) Sorry;
3 sorry. Let him finish.

4 THE WITNESS: May I answer?

5 MR. IASPARRO: Sorry. Thought you were
6 done.

7 A. They know this going into the apartment, and
8 what -- and all we get are photographs? What's
9 going on?

10 BY MR. IASPARRO:

11 Q. Are you aware of the fact that Mr. Pursley and his
12 lawyers stipulated during his jury trial back in
13 1994 to the chain of custody relating to all this
14 evidence?

15 A. Okay. I'm agnostic about that.

16 Q. Any reason to dispute that?

17 A. I don't dispute anything in the record if it's
18 documented and written and certified. I don't
19 dispute that. I'm talking about what you do when
20 you're doing a murder investigation, and you know
21 I'm going in that apartment, I'm going to try to
22 find -- and I have information that the murder
23 weapon might be in there, and, by the way, I don't
24 find it, and I have to get the occupant to show

1 me. So I mean that stuff needs to be documented.

2 Q. I'm showing you Exhibit 19, which is Bates marked
3 Pursley 000756. Have you ever seen this document
4 before, Mr. Clark?

5 A. I have everything related to the trial, and I --
6 as I recall the sequence of Bates numbers, yes, I
7 do have it.

8 Q. All right. And for purposes of the record today,
9 this is entitled, "Stipulation," correct?

10 A. Counsel, I agree. How they conduct his trial is
11 not part of my report. I don't want to be
12 argumentative. I just -- I don't understand the
13 stipulation, why they would do it, but
14 nevertheless it was done and then finally
15 challenged and overcome in another trial.

16 Q. Okay. Well --

17 MS. HAGY: (Interrupting) Michael, can
18 you say the Bates number again? I missed it.

19 MR. IASPARRO: One second.

20 MS. HAGY: Thank you.

21 MR. IASPARRO: Pursley 756.

22 MS. HAGY: Okay.

23 BY MR. IASPARRO:

24 Q. I want to make my record here, Mr. Clark, so

1 please answer my question. We can agree that this
2 is a document entitled, "Stipulation," correct?

3 A. Yes.

4 Q. And it has a file stamp on it April 7, 1994?

5 A. Okay.

6 Q. First paragraph of the stipulation, "The following
7 stipulation is entered into between the parties
8 regarding evidence items tagged by the police as,"
9 and then it lists a number including "A48089, a
10 Taurus gun and magazine," lists out some other
11 items, including the fired bullet slug, fired
12 bullet slug, two spent bullet casings and a fired
13 bullet slug fragment. "These items all were
14 delivered to Illinois State Crime Lab Forensic
15 Scientist Dan Gunnell in the same condition as
16 when they were first tagged into evidence by
17 Rockford police officers," correct?

18 A. I see it.

19 Q. That's what it says, that's what Mr. Pursley's
20 lawyers and the state stipulated to.

21 A. Right. Okay.

22 MS. HAGY: Objection. Counsel is
23 testifying now, and this is beyond scope and
24 irrelevant.

1 BY MR. IASPARRO:

2 Q. Well, this whole stipulation is relevant, isn't
3 it, Mr. Clark, because it undercuts your criticism
4 regarding the chain of custody of these very
5 items?

6 MS. HAGY: Objection, mischaracterizes
7 evidence, his prior testimony, his report.

8 A. I disagree with that conclusion, and I have not
9 altered my written opinion. This was very
10 significantly mishandled in terms of search and
11 documentation of the search and then the following
12 seizure of evidence.

13 BY MR. IASPARRO:

14 Q. What would you have done differently?

15 MS. HAGY: Are you asking him as a
16 defense attorney? As what? Because he's not
17 testifying as a defense attorney.

18 MR. IASPARRO: Clearly not.

19 A. So I have done a number of very significant
20 searches on -- and supervised and commanded such
21 in very significant cases including death penalty
22 cases and insisted on a very strict protocol of
23 entry and documentation and recording of
24 everything that's done by all personnel under

1 lawful authority in the area searched and the
2 seizure thereof and insisting on competent,
3 trained, forensic lab people to secure that
4 evidence and transport it for further scientific
5 evaluation.

6 BY MR. IASPARRO:

7 Q. Thank you. All right. We're moving on in your
8 report, on to Page 27, the section, "Samantha
9 Crabtree's Statement Bears Hallmarks of Coercion."
10 Do you see that?

11 A. Yes.

12 Q. Have you concluded that Samantha Crabtree falsely
13 implicated Patrick Pursley in the murder of
14 Andrew Ascher?

15 A. Yes.

16 MS. HAGY: Objection, form.

17 THE WITNESS: I'm sorry. The answer is
18 yes.

19 BY MR. IASPARRO:

20 Q. Well, isn't that a credibility determination?

21 A. No. It's --

22 MS. HAGY: (Interrupting) Objection.

23 THE WITNESS: It's based on the
24 commentary of the -- and the record established in

1 the second trial and the finding by the judge.

2 BY MR. IASPARRO:

3 Q. Well, Samantha Crabtree didn't testify at the
4 second trial, did she?

5 A. No, she didn't.

6 Q. She testified -- she gave a written statement,
7 testified at the grand jury consistent with that
8 written statement, recanted by way of affidavit,
9 and then testified at the first trial, right?

10 A. Yes.

11 Q. Okay. So you're not crediting her written
12 statement and grand jury testimony, you are
13 crediting her affidavit and trial testimony from
14 April, 1994?

15 A. No.

16 MS. HAGY: Objection.

17 THE WITNESS: No. That's not it at
18 all.

19 BY MR. IASPARRO:

20 Q. Help me understand how that's not it.

21 A. Because she's not reliable, period. And that's in
22 the very beginning, and so everything that follows
23 cannot be considered truthful or not truthful.
24 That's, by the way, what the judge says. You just

1 can't count on anything she's saying whatsoever.
2 However, saying that, this -- these following
3 paragraphs comment on the way she is handled as an
4 informant and statements are taken while in
5 custody, and I think I tried to be complete in
6 that criticism.

7 Q. But you can't have it both ways, can you,
8 Mr. Clark? You can't say that she's not credible
9 in any respect but then credit what she says about
10 how she was treated by Detectives Schmidt and
11 Forrester.

12 MS. HAGY: Objection, form --

13 BY MR. IASPARRO:

14 Q. (Interrupting) That's what you're doing, right?

15 A. No.

16 MS. HAGY: Objection, form.

17 MS. KEEN: Let -- counsel is trying to
18 make an objection.

19 THE WITNESS: Am I ready for the
20 answer?

21 MS. HAGY: I'm just going to say
22 objection, form, mischaracterizes his testimony.

23 THE WITNESS: So, no, that is not it at
24 all. It's not her verbal statements. It is what

1 is in the record on what they say she went through
2 when they interrogated her and the statements she
3 made. And the commentary that I wrote is this is
4 obviously such extreme coercion it is unreliable.
5 I'm not giving her credibility in any regard.

6 BY MR. IASPARRO:

7 Q. So have you concluded that certain Rockford police
8 detectives manipulated Samantha Crabtree into
9 falsely implicating Pursley in the Ascher
10 homicide?

11 MS. HAGY: Objection, form,
12 mischaracterizes his testimony and his report.
13 A. I think the question is in two parts. Manipulated
14 her, yes. And I can be more precise. Regarding
15 what she says, that's -- it's so -- because of the
16 manipulation and the way she was treated, it makes
17 whatever she says unreliable unless it can be
18 substantiated by other methods.

19 BY MR. IASPARRO:

20 Q. Isn't that a credibility determination?

21 A. Oh, absolutely not, no. This is -- this is -- you
22 bring somebody in and say, "Sis, you're going to
23 jail for bank robbery and you're not going to see
24 your kids until they are 40 years old, and you're

1 in a world of hurt," and then they talk to her for
2 a couple of hours and say, "Now we're going to
3 take your statement," after she rolls over and
4 shows them where everything is, et cetera. And
5 that's considered reliable? No.

6 Q. But that's what she said, not what the detective
7 said happened, right? So you're making --

8 MS. HAGY: (Interrupting) Objection.

9 BY MR. IASPARRO:

10 Q. (Continuing) -- so you're making a credibility
11 determination.

12 A. No. I'm making a professional statement about how
13 reliable she would be and why they would know it
14 and what their obligation is to make sure they get
15 a voluntary statement.

16 Q. And you've said that five or six times, probably
17 more now. Whenever I ask you about a credibility
18 determination, you dance around it and you say,
19 "No. It's a professional determination." Just --
20 it's the same thing, right?

21 A. No, it isn't.

22 MS. HAGY: Objection, form,
23 argumentative, mischaracterizes his testimony.

24 THE WITNESS: It is distinctly

1 different, and that's why I'm saying it the way I
2 am. And in no way do I intend on dancing on the
3 head of a pin metaphorically to parse out some
4 sort of way to -- it can be taken differently.

5 BY MR. IASPARRO:

6 Q. All right. Mr. Clark, you're critical of the
7 detectives, in particular Detectives Forrester and
8 Schmidt, who we are talking about with respect to
9 the Crabtree statement. You're critical of
10 them for, in your words, delaying advising
11 Miss Crabtree of her Miranda rights; is that
12 accurate?

13 A. Among other things, yes.

14 Q. All right. Well, I'm just focusing in on that
15 for now. When do you believe the detectives
16 questioning Miss Crabtree were required to advise
17 her of her Miranda rights?

18 A. The moment she's arrested.

19 Q. Which was when?

20 A. Right after Patrick jumps out of the car and runs
21 away and she's still in the car. They locate her
22 at a porch, I think, and then they take her into
23 custody.

24 Q. Well, doesn't the record reflect the fact that

1 they asked her if she would come and talk to them
2 and she did so voluntarily?

3 A. Well, that's what they say. But I think the
4 totality of the circumstances, it's -- as the
5 record indicates, she's in the car and it's a
6 stolen car, and the boyfriend makes a run for it,
7 and then they take her in tow. That's in her
8 mind, and as a detective would know, I'm not going
9 to be able to say no.

10 Q. Is that another professional determination?

11 MS. HAGY: Objection, form,
12 argumentative.

13 A. It's a professional requirement to make sure that
14 whatever she's going to say to you is going to be
15 absolutely without coercion.

16 BY MR. IASPARRO:

17 Q. Can you point me to anywhere in the record which
18 indicates that prior to Miss Crabtree being
19 advised of her Miranda rights she was not free to
20 leave?

21 MS. HAGY: Objection, form,
22 argumentative.

23 A. As you asked the question, there's nothing one way
24 or the other.

1 BY MR. IASPARRO:

2 Q. All right. We're on Page 27 of your report, and
3 it's the third paragraph from the bottom, the one
4 that begins with, "Forrester's report says she
5 gave three verbal statements about the bank
6 robbery, Burger King robbery, and Ascher murder."
7 You see that?

8 A. Yes.

9 Q. And I want to focus in on the last sentence, which
10 says, "This very easily could have had a coercive
11 impact on the rest of her statements, especially
12 if they offered her immunity for the bank robbery
13 if she provided them information about the
14 murder." Have you reviewed some information that
15 indicates that any Rockford police detective
16 offered Samantha Crabtree immunity for the bank
17 robbery if she provided them information about
18 Pursley's involvement in the Ascher homicide?

19 MS. HAGY: Objection, form.

20 A. I have to go to the grand jury testimony. There's
21 no direct -- and the COR and Getty 112 to 118.
22 There's no statement, "We offered immunity."

23 BY MR. IASPARRO:

24 Q. Okay. You understand that Miss Crabtree pled

1 guilty to that bank robbery?

2 A. I do.

3 Q. Okay. So it doesn't make sense that she would
4 have been offered or granted immunity for the bank
5 robbery, right?

6 A. Well, there's more to it than just conviction.
7 There's the sentencing and what she's going to
8 face in terms of what's going to be inflicted on
9 her.

10 Q. Okay. Well, she went to prison. I can represent
11 that to you. If she was provided immunity, she
12 would not be able to be prosecuted for it and
13 convicted of it, true?

14 A. If she was offered immunity for the crime, often
15 the offers are for lesser sentence or an
16 agreement, plea bargain, those types of things.
17 I've been party to those many, many times.

18 Q. You're critical of Detective Forrester for having
19 not documented in his report exactly what
20 Miss Crabtree said with respect to her -- her
21 verbal statements regarding the homicide,
22 Burger King robbery and the First Bank North
23 robbery, correct?

24 A. Yes. I commented on how the interrogation should

1 occur and how it should be recorded.

2 Q. Why would it be necessary for him to document what
3 was said when the contemporaneous documentation is
4 her written statements themselves?

5 MS. HAGY: Objection, form,
6 mischaracterizes evidence.

7 A. Well, we won't know unless we have a recorded
8 statement to contrast it. Typically this -- the
9 signed documents or the statement -- and you
10 notice she initialed each paragraph -- are
11 typically as a result of negotiations or comments
12 back and forth or even instructions back and
13 forth. And that is absent if we don't record it
14 during that entire time she was in -- being
15 confronted by Forrester and others.

16 BY MR. IASPARRO:

17 Q. Showing you what's been marked as Exhibit 22,
18 COR and Getty 129. Do you recognize this
19 document, sir?

20 A. Yes, I do.

21 Q. And this is a Miranda rights waiver form signed by
22 Miss Crabtree at 5:23 p.m., correct?

23 A. Exactly.

24 Q. Do you know as you sit there today when the

1 determination was made by Detectives Forrester
2 and Schmidt and the others involved in the
3 investigation at this time that Miss Crabtree was
4 not going to be free to leave that evening?

5 A. Well, I don't know because we don't have the
6 recorded record when that announcement was made.
7 We have some comment about what they told her,
8 "You're not going to get out of jail until your
9 children are 40." And she's pregnant, by the way,
10 when this is occurring.

11 Q. That's what she said, right?

12 A. I'm sorry?

13 MS. HAGY: Objection.

14 BY MR. IASPARRO:

15 Q. That's what -- Miss Crabtree said that?

16 A. Right. She told them she was pregnant.

17 Q. No. She's the one who indicated that that threat
18 was made to her, that she wouldn't get out of jail
19 until she was 40 and she wouldn't see her kids?

20 A. Right, because we have no other recording of -- we
21 have no -- and they didn't put in the -- they
22 didn't -- Forrester didn't write his report, "I
23 told her she wouldn't get out of jail until her
24 children were 40," and then she says dah, dah,

1 dah. That's not there.

2 Q. I guess that's my point, Mr. Clark. And again
3 we'll dance on the pinhead, as you've described,
4 but Detective Forrester's report does not reflect
5 that Samantha Crabtree says it happened, you're
6 crediting Samantha Crabtree, right?

7 MS. HAGY: Objection, form,
8 mischaracterizes evidence and his prior testimony.

9 A. No. As I commented to you, all we know is that
10 she was held -- she wasn't given this Miranda --
11 she wasn't Mirandized until much later after a lot
12 of -- incidentally going to the apartment and
13 coughing up the guns and so forth. So it is what
14 it is. And without the recordings, which are so
15 simple, and, by the way, they do it. We know that
16 because there was a video of the crime scene, the
17 homicide, that it leaves big gaps for writing a
18 report the way you want. I comment on that later
19 on in my opinion here.

20 BY MR. IASPARRO:

21 Q. Are you aware of any evidence, Mr. Clark, that you
22 reviewed that on June 10, 1993, when Miss Crabtree
23 was talking to the police officers that she knew
24 what Marvin Windham had told the police

1 anonymously through his Crime Stoppers call on
2 June 8, 1993?

3 A. I don't remember if she was confronted with that
4 Windham had told them certain things. I'm not
5 aware of it. I can't remember.

6 Q. It wouldn't make sense if she was confronted in
7 that manner because they didn't know that it was
8 Marvin Windham who made the Crime Stoppers call at
9 that point, right?

10 MS. HAGY: Objection, form,
11 mischaracterizes evidence.

12 A. I don't know one way or the other if she was told,
13 "Marvin Windham called us and told us -- " because
14 she would know Marvin Windham -- "told us" such
15 and such.

16 THE WITNESS: So in about five minutes
17 can we do an hour's break or lunch break?

18 MR. IASPARRO: That's fine with me. I
19 have a few more questions now for you.

20 THE WITNESS: Sure.

21 MR. IASPARRO: And I guess that makes
22 sense. I know the other attorneys probably have
23 some questions for you.

24 MS. HAGY: Are you able to say,

1 Michael, how much time you guys have left in
2 total?

3 MR. IASPARRO: I can't speak for
4 everybody else. I would say -- you know, I cut a
5 fair amount out of what I've got in my outline
6 here, and I might have another ten minutes or so
7 myself.

8 MS. KEEN: I have the same question,
9 Lindsay and Counsel, gentlemen, because if it's
10 not a huge amount longer, I wonder if Roger wants
11 another break instead of a big, long lunch break.

12 But I defer to Roger's lunch schedule,
13 but it's just something maybe worth thinking about
14 off the record.

15 THE WITNESS: I mean I just need a
16 little -- need to put a little something in my
17 stomach.

18 MR. MOGBANA: Maybe 30 minutes,
19 30-minute break instead of an hour.

20 THE WITNESS: That will be fine with
21 me. Thirty minutes is fine.

22 MR. MOGBANA: So, Michael, when you're
23 done with your line of questioning, maybe we'll
24 come back in 30 minutes.

1 MS. KEEN: I can speak for Joel and I
2 when I say we want to get out of here, Friday
3 afternoon.

4 MR. IASPARRO: All right. Mr. Clark,
5 I've got a few more questions for you now if
6 that's all right.

7 THE WITNESS: Yes. That's fine.

8 BY MR. IASPARRO:

9 Q. I want to go to Page 34 of your report. It's in
10 front of you on the screen, I think. Under the
11 heading, "To a Reasonably-Trained Law Enforcement
12 Officer, There Was No Evidence-Based Probable
13 Cause to Arrest Pursley." Do you see that?

14 A. Yes.

15 Q. And then you write, "The decision to charge
16 Mr. Pursley was based on RPD's false and distorted
17 presentation of their version of the incident and
18 case." Do you see that?

19 A. Yes.

20 Q. As you sit there right now, do you know what
21 facts and evidence the detectives who met with
22 Judge Kennedy presented to him in support of their
23 request for an arrest warrant for Mr. Pursley for
24 the offense of first degree murder?

1 A. No.

2 Q. Is there any way to characterize that paragraph
3 that I just directed you to as containing anything
4 other than your legal conclusion that probable
5 cause was lacking?

6 MS. HAGY: Objection, form,
7 mischaracterizes his report and his testimony,
8 asked and answered.

9 A. Yes. I'm trying to find the citation I gave that
10 one of the investigative teams said there wasn't
11 any probable cause. He agreed. But it has to do
12 with the charging in the homicide, not the other.
13 This is strictly about charging him for murder,
14 probable cause for murder. And I think I can
15 probably find that during lunch on the break. One
16 second here. Oh, here it is. So Genens himself
17 in his deposition, Page 99, said -- oh, no.
18 That's wrong. Anyway, you may remember I
19 testified as we were going through the report
20 about probable cause from their perspective of
21 whether or not he was -- there's probable cause
22 for arresting him for the homicide. And those are
23 the reasons, those bullet points.

24 BY MR. IASPARRO:

1 Q. All right. You have concluded for yourself that
2 Mr. Pursley did not murder Andrew Ascher?

3 MS. HAGY: Objection, form,
4 mischaracterizes prior testimony.

5 A. The -- there's no evidence that he did commit the
6 murder, and the key piece of physical evidence
7 is -- indicates that he -- he did not have in his
8 possession the murder weapon. At least the murder
9 weapon -- the alleged murder weapon was not
10 recovered, was never recovered, was never
11 recovered.

12 BY MR. IASPARRO:

13 Q. So in making that determination you are
14 discounting the testimony from the
15 Illinois State Police forensic scientists
16 regarding the Taurus 9mm and the cartridge cases
17 found at the scene, Samantha Crabtree's written
18 statement of June 10, 1993, Marvin Windham's
19 written statement of June 12, 1993, and
20 Lester Brown's written statement from December of
21 1993, correct?

22 MS. HAGY: Objection, mischaracterizes
23 the evidence.

24 A. That -- those among others as -- and as noted by

1 the judge in the second trial, and I did find the
2 citation where Detective Pirages agreed in his
3 deposition that other crimes did not establish
4 probable cause. That was in his deposition on
5 Page 135.

6 Q. Okay. Well, let's follow up on that.
7 Assuming that's an accurate summary of
8 Detective Pirages's -- Sergeant Pirages at the
9 time -- Sergeant Pirages's deposition testimony,
10 that testimony was that the other crimes, bank
11 robbery and the Burger King robbery, did not
12 establish probable cause to arrest Mr. Pursley for
13 first degree murder, correct?

14 MS. HAGY: Objection, form.

15 A. That's exactly correct.

16 BY MR. IASPARRO:

17 Q. And that's a lot different from your criticism
18 here on Page 34, which was that the decision to
19 charge Mr. Pursley was based on RPD's false and
20 distorted presentation of their, in quotes,
21 version of the incident and case, right?

22 MS. HAGY: Objection, form.

23 A. Right. And it's supported by the three bullet
24 points. That's the rationale for that paragraph.

1 BY MR. IASPARRO:

2 Q. And with respect to the bullet point regarding
3 testimony from family and friends about
4 Mr. Pursley's location at the time of the
5 homicide, those are the -- for lack of a better
6 term -- alibi witnesses, if you will, who
7 testified at Mr. Pursley's trial in April, 1994,
8 correct?

9 A. That's right. And -- you're correct.

10 Q. All right. And none of those people came forward
11 and gave statements to the police in June of 1993
12 when Mr. Pursley was arrested, did they?

13 MS. HAGY: Objection, form,
14 mischaracterizes evidence.

15 A. Well, I don't know about them coming forward. I
16 know the obligation of the detective to
17 reconstruct every minute of that day of the murder
18 for their prime suspect.

19 BY MR. IASPARRO:

20 Q. Well, do you know when those witnesses who
21 testified at the trial in April, 1994, about
22 Mr. Pursley's whereabouts the night of the Ascher
23 murder -- do you know when they were disclosed by
24 the defense attorneys to the prosecution?

1 MS. HAGY: Objection, form.

2 A. Yeah. That's the point. It's -- it was disclosed
3 in defense, not as part of the investigation.

4 BY MR. IASPARRO:

5 Q. But that doesn't undercut the probable cause
6 determination, right?

7 A. Well, if they -- if they had done their diligence
8 in the investigation and reconstructed his comings
9 and goings and contacted those witnesses, they
10 would have said, "Yeah, he was here. He wasn't
11 there -- he wasn't there for the crime occurred."
12 That would be an expected -- especially the
13 connection they had with him. That would be an
14 expected investigative workup of the case.

15 Q. And of course if those family members who cared so
16 much about him would have come forward in June of
17 1993, that might have been helpful, too, right?

18 MS. HAGY: Objection, argumentative,
19 mischaracterizes evidence.

20 A. Here's the point: Knowing typically a suspect
21 will recruit alibis, you preempt that by going out
22 and contacting -- "Did you see him that night?"
23 "Was he with you?" Close that door before it
24 becomes a problem. And if they say, "Yeah, he was

1 here," then the investigation verifies something
2 different than the Crabtree or Windham says.

3 BY MR. IASPARRO:

4 Q. You do not know with absolute certainty whether
5 Patrick Pursley killed Andrew Ascher or not,
6 right?

7 MS. HAGY: Objection, asked and
8 answered, form.

9 A. No, I don't. I only know that the murder weapon
10 could not be -- the alleged murder weapon which
11 was connected to him in this case was not the
12 murder weapon.

13 BY MR. IASPARRO:

14 Q. And you base that on accepting what Mr. Murdock
15 and Mr. Coleman have testified to?

16 MS. HAGY: Objection, asked and
17 answered, form, mischaracterizes prior testimony.

18 A. And Judge McGraw, yes.

19 MR. IASPARRO: All right. Why don't we
20 take our break now. I may be done with my
21 questioning. I'll review my notes during the
22 break, and then I will likely turn it over to my
23 colleagues.

24 THE WITNESS: Okay. So it will be

1 36 after the hour?

2 MR. IASPARRO: Sounds good to me.

3 THE WITNESS: Okay. I'm signing off.

4 (A 30-minute recess was taken.)

5 MR. IASPARRO: Everybody ready?

6 THE WITNESS: I'm ready.

7 MR. IASPARRO: Okay.

8 Lindsay, you might object to this, I
9 don't have any more questions.

10 MR. MOGBANA: I have questions,
11 Michael. I don't know, am I able to share the
12 screen? Did you make -- enable that; do you know?

13 MR. IASPARRO: All right. We're going
14 to test my capabilities here.

15 (Discussion off the record.)

16 MR. MOGBANA: Mr. Clark, my name is
17 Ifeanyi Mogbana, and I represent the City of
18 Rockford.

19 I'll have a few questions.

20 BY MR. MOGBANA:

21 Q. So this is a copy of the report that you
22 submitted, and I -- and it was previously marked.
23 I just want to use my copy so that I'll be able to
24 mutilate it. So you're looking at a copy, right.

- 1 Mr. Clark?
- 2 A. I am, my copy.
- 3 Q. Yes. So your -- you said that the material
- 4 provided you, you reviewed plaintiff's first
- 5 amended complaint, right?
- 6 A. Yes.
- 7 Q. Are you aware that the plaintiff filed another
- 8 amended complaint and the first amended complaint
- 9 isn't the most current complaint?
- 10 A. No, I'm not aware of it.
- 11 Q. But you did review the first amended complaint?
- 12 A. I did.
- 13 Q. Okay. So did you form any opinion about any of
- 14 the City of Rockford's policies and practices as
- 15 it relates to the police department?
- 16 A. Well, I noted that they said in their depositions
- 17 they were not trained on policies.
- 18 Q. Sorry. Mr. Clark, that's not my question. My
- 19 question is --
- 20 A. (Interrupting) Well, then --
- 21 Q. (Interrupting) Hold on. Did you form an opinion
- 22 about specific policies or practices of the police
- 23 department?
- 24 MS. HAGY: Objection, form.

1 And I'd like to ask you please not to
2 cut him off.

3 A. So I'm taking written policies? I considered
4 their general orders and the orders that I cited
5 as adequate. Procedures are I think -- are laced
6 throughout the report and that they have proffered
7 in their depositions when asked that they were
8 following the department procedures.

9 BY MR. MOGBANA:

10 Q. Again, Mr. Clark, did you form any specific
11 opinions about the City of Rockford police
12 department's policies and procedures?

13 MS. HAGY: Objection, form, asked and
14 answered.

15 A. I formed specific opinions regarding Rockford's
16 procedures in this case, and they are reflected in
17 the commentary of the report. I don't know what
18 else you have in mind.

19 BY MR. MOGBANA:

20 Q. Well, what I have in mind is the page number
21 where you opined on the City of Rockford police
22 practices and policy.

23 A. I've always taken your question practices and
24 policies. That's two separate aspects, but one

1 that comes to mind right away is Page 31. Let me
2 bring you to that attention here. First
3 paragraph, Page 1 -- 31.

4 Q. Okay.

5 A. "Unfortunately Schmidt and Forrester's tactics
6 seem to be in line with the commonly-accepted
7 practice of the Rockford Police Department. There
8 was a written policy against," quote, "'lengthy
9 interrogations.'" Several officers like
10 Detective Scott said they were never given
11 training on this policy," cited. "As experienced
12 detectives they should have known that the
13 interrogation tactics used on Samantha could
14 impact the accuracy of her statement." That's one
15 example. There's another one in the report, and
16 if you can give me a minute, I can find it about
17 Brady training and policy and practice.

18 Q. So now you've talked about Page 31. You said
19 there's another one. Can you get us there?

20 A. Sure. Hold on a second. I mean you've captured
21 my screen. Let me see what I can do here. I'm
22 just having to go through memory.

23 Q. I'm scrolling through your report, so you can look
24 at the screen and you can find where exactly.

1 MS. HAGY: Roger, if he stops sharing
2 for a moment, can you find it on yours, or are you
3 able to minimize the zoom so that you can use the
4 rest of your computer?

5 A. The same page.

6 BY MR. MOGBANA:

7 Q. Okay. So Page 31 for the record.

8 A. Last paragraph.

9 Q. Okay.

10 A. "Detective Hanson, however, testified RPD officers
11 were never given any training on the Brady rule or
12 their duty to disclose exculpatory evidence,"
13 their citation. "If that is true, it is an
14 extreme departure from widely-accepted police
15 department practices and clearly-established
16 expectations. Failure to train officers on their
17 Brady obligations can lead to criminal defendants
18 not having access to exculpatory information,
19 which can cause innocent people to be convicted."
20 Next -- well, I'll leave it at that. Those are
21 the two as I sit here.

22 Q. Okay. So those are the two opinions that you
23 formed regarding the policies and practices of the
24 police department; is that fair?

1 A. It's two that come to mind as I sit here, and I
2 think what needs to be inserted in this answer is
3 that throughout my report --

4 Q. (Interrupting) Okay. So, sorry. I'm going to
5 stop you there.

6 MS. HAGY: Please don't. Please don't.

7 A. You're not giving me an opportunity to answer the
8 question.

9 MR. MOGBANA: You can make your
10 objection and just stop.

11 Then, Mr. Clark, you need to answer my
12 question. It's not generally meander.

13 MS. HAGY: He was answering your
14 question. I think you need to let --

15 MR. MOGBANA: (Interrupting) Lindsay,
16 hold on. Lindsay, hold on. Hold on. Yeah. We
17 want to wrap this up. It's a Friday.

18 Mr. Clark, can you hear me?

19 MS. KEEN: If you don't let him answer,
20 we're going to end the deposition, and we'll --

21 MR. MOGBANA: (Interrupting) You can
22 always do that, Roshna. You know how that all
23 works. You can always do that.

24 MS. KEEN: You don't let him answer.

1 That's all we're asking. That's all we're --

2 MS. HAGY: (Interrupting) He was
3 answering your question.

4 MR. MOGBANA: Okay. You guys don't get
5 to double-team. You keep going double-team, I can
6 still, you know, talk over both of you, and we're
7 not making any progress.

8 You made your objection for the record.
9 That's fine.

10 BY MR. MOGBANA:

11 Q. Mr. Clark, my question is you made these two
12 opinions regarding the policies and practices of
13 the Rockford Police Department. Do you have
14 another specific opinion apart from these two?

15 MS. HAGY: Objection.

16 BY MR. MOGBANA:

17 Q. It's a yes-or-no answer.

18 MS. HAGY: Objection, form.

19 And I'll please implore you to let him
20 answer your question.

21 MR. MOGBANA: That's not an objection.

22 BY MR. MOGBANA:

23 Q. Mr. Clark?

24 A. Sir, first I want it in the record I was not

1 allowed to answer the previous question. Do you
2 want me to answer that question, the previous
3 question?

4 Q. Go ahead.

5 A. Thank you. I do not incidentally as a segue
6 intend to be contentious. I don't try to do that.
7 I wanted to say after giving you the two examples
8 that came immediately to my mind, that I consider
9 the entirety of the report reflective on Rockford
10 in a number of ways. Not anticipating that
11 particular question, that's the best I can do at
12 this time.

13 Q. So let me ask again. You said two examples. You
14 spent hours writing a report, and my question -- I
15 just want to make sure that these two opinions
16 that we fleshed out on Page 31 are the two
17 opinions you have regarding the Rockford Police
18 Department policy and practice; is that correct?

19 A. No.

20 MS. HAGY: Objection, form,
21 mischaracterizes his report and his prior
22 testimony. And this is not a memory test.

23 BY MR. MOGBANA:

24 Q. Which -- in what other part of your report are

1 opinions regarding the Rockford Police Department
2 contained?

3 MS. HAGY: Objection, same objections
4 and calls for a narrative answer, form.

5 MR. MOGBANA: Well, we're in a
6 deposition. That's why we need a narrative
7 answer. That's the point of a deposition.

8 BY MR. MOGBANA:

9 Q. Mr. Clark?

10 A. I'm ready when you -- the commentary continues. I
11 mean when the commentary settles down. I'm ready.
12 So, sir, first, the holding -- the apparent policy
13 and practice of holding on to evidence that should
14 go immediately to the crime lab, the policy --

15 Q. (Interrupting) Sorry. Which page? Which page?
16 The one you just talked about, which page? Can
17 you tell me the page that's on?

18 A. Oh, sure. Hold on a second. It would be on
19 Page 13.

20 Q. Page 13.

21 A. "The Rockford Police Department Abandoned
22 Generally-Accepted Police Practices with Respect
23 to Physical Evidence."

24 Q. Okay. So that's the third opinion. Which other

1 opinion do you have?

2 A. Another opinion is Page 10, the "Rockford Police
3 Department's Investigative Failures to Resolve
4 Leads and Develop Evidence of Possible Suspects."
5 Let me continue. Page 16, "Rockford Police
6 Department Did Not Contemporaneously Document
7 Windham Statements." Twenty, "RPD Did Not
8 Disclose Information About Benefits it Provided to
9 Windham." Page 23, "Detectives Skipped Basic
10 Steps and Violated Policies During Their Search of
11 Samantha and Pursley's Apartment and Its Discovery
12 of the Supposed Murder Weapon." Twenty-five,
13 "Deviations From Standards in Developing
14 Ballistics Evidence." Twenty-seven, "Samantha
15 Crabtree's Statement Bears Hallmarks of Coercion."
16 Thirty-one, "RPD Ignored Evidence that Undermines
17 Their Case Against Pursley." That's it.

18 Q. Okay. Those are all your opinions, right?

19 A. Yes.

20 Q. Okay.

21 MS. HAGY: Objection. Sorry.

22 Objection, mischaracterizes his
23 testimony and his report.

24 BY MR. MOGBANA:

1 Q. Okay. I'll start in the order that you -- sorry,
2 not in the order but in some sequential order
3 starting from Page 10, which I have your report
4 pulled up. So you would -- all right. So you
5 said, "The failure to resolve leads and develop
6 evidence of possible suspects." You see that,
7 that's one of your opinions?

8 A. Yes.

9 Q. Did you recognize that to be a policy of the
10 department?

11 MS. HAGY: Objection, form.

12 A. As expressed by the officers, yes.

13 BY MR. MOGBANA:

14 Q. Can you give me a factual basis for your opinion
15 that as expressed by the officers it was the
16 policy of the department to fail to resolve leads?

17 MS. HAGY: Objection, form.

18 A. That I saw in each one of their depositions the
19 statements proffered that they adhered to the
20 policies and procedures of the department as they
21 understood them in this investigation and did not
22 deviate from the accepted policies and procedures,
23 formal or informal, from their activities.

24 BY MR. MOGBANA:

1 Q. Mr. Clark, you understand a policy to be a written
2 document, right?

3 MS. HAGY: Objection, form.

4 A. A policy is a framework to action as defined in
5 the literature.

6 BY MR. MOGBANA:

7 Q. Mr. Clark, you understand a policy to be a written
8 document?

9 MS. HAGY: Objection, form, asked and
10 answered, argumentative.

11 A. No. A policy can be written or informally
12 understood.

13 BY MR. MOGBANA:

14 Q. Okay. So what's your understanding -- what's your
15 understanding of what a custom, a departmental
16 custom is?

17 MS. HAGY: Objection, form.

18 A. A custom is a standing activity or process in the
19 organization.

20 BY MR. MOGBANA:

21 Q. All right. So you would agree with me that if a
22 police procedure isn't written, it's a custom, but
23 if it's written, it's a policy; would you agree
24 with that proposition?

1 A. No, I wouldn't.

2 MS. HAGY: Objection, form and to the
3 extent that this calls for a legal conclusion.

4 THE WITNESS: No. It can be a policy,
5 written or unwritten. Policy is a framework to
6 action. It can be either written or it can be
7 understood by the organization as occurring, what
8 to expect when certain things occur.

9 BY MR. MOGBANA:

10 Q. All right. You also said that you got -- that
11 Rockford had a policy based on the testimony of
12 the detectives as they understood it; is that
13 fair? Did I fairly rephrase your prior testimony?

14 A. Yes.

15 MS. HAGY: Objection, form.

16 BY MR. MOGBANA:

17 Q. So if it's how they understood it, how is that the
18 policy of the department if it's how they
19 understood it?

20 MS. HAGY: Objection, form, calls for a
21 legal conclusion.

22 MR. MOGBANA: Go ahead, Mr. Clark.

23 A. Let me see if I can explain it succinctly. If a
24 seasoned officer -- for example, Rockford with

1 24 years of experience when this occurred --
2 continually and unabated by the department
3 conducts his investigations in certain ways that
4 it -- it is a established policy, not written.

5 BY MR. MOGBANA:

6 Q. So that wouldn't be custom, that would be policy
7 in your view?

8 A. It could be a custom. Often it's called custom
9 and practice. Those terms often occur in the
10 literature, and it can be a custom, but that
11 custom is a reflection of the department's policy
12 in a circumstance.

13 Q. All right. So you said if the detective over a
14 24-year period or some period of time continues
15 acting a certain way unabated -- your words, not
16 mine -- it would be either in your view policy or
17 custom; is that fair?

18 MS. HAGY: Objection, form, calls for a
19 legal conclusion.

20 A. I think I would agree -- let me give an example in
21 the context. Interrogation's not recorded, which
22 appears in the record as routine and what they do.
23 And so I found nothing in the written policy that
24 all interrogations will be recorded one way or the

1 other incidentally. So that is an apparent policy
2 of the department to do interrogations without
3 recording them.

4 BY MR. MOGBANA:

5 Q. So your -- in your view, the absence of a
6 requirement is a policy, in this case not to
7 document statements in a certain way; did I
8 capture that accurately?

9 MS. HAGY: Objection, form, calls for a
10 legal conclusion.

11 Go ahead.

12 A. The answer is the policy can be reflective of
13 an act forbidding or commanding it with a
14 consequence attached. So that would be correct,
15 it would -- the absence of a written policy is --
16 does not excuse an officer for failure to conduct
17 properly -- themselves properly.

18 BY MR. MOGBANA:

19 Q. Mr. Clark, we would make a lot of more progress if
20 you just answer my question. So my question is
21 this: Using your example, the failure to have a
22 policy on a particular topic is a policy in
23 itself; is that your opinion?

24 A. That's the way I'm answering the question.

1 MS. HAGY: Objection.

2 BY MR. MOGBANA:

3 Q. That's a yes or no. Is that your opinion?

4 A. No.

5 MS. HAGY: Objection, argumentative,
6 form.

7 THE WITNESS: I'm doing my best here,
8 and that's -- it's not a fair way to get my
9 truthful testimony.

10 So the answer is whether -- whether
11 it's written or not, it's what they do, and it's
12 reflective often of policy.

13 BY MR. MOGBANA:

14 Q. That's not my question. What I'm trying to get
15 ahold of, Mr. Clark, is if an officer does
16 something a certain way, does that mean that
17 that's the department's policy; is that your
18 testimony?

19 MS. HAGY: Objection, form, calls for a
20 legal conclusion, argumentative.

21 A. So you asked me two things in that question. The
22 answer is no, not always, but it can be.

23 BY MR. MOGBANA:

24 Q. You also said that you opined that the department,

1 "Abandoned generally-accepted police practices
2 with respect to physical evidence." You see that?

3 A. Yes.

4 Q. All right. My question is what policy, what
5 policy did you review that illuminated this
6 departure?

7 MS. HAGY: Objection, form.

8 A. Thank you. Because it's laced throughout the
9 report, not only --

10 BY MR. MOGBANA:

11 Q. (Interrupting) Okay. Mr. Clark, laced throughout
12 the report wouldn't help. You're going to ask
13 your question, but I just want to make sure that
14 you're answering my question. You don't just get
15 to opine. This is the time you answer the
16 question. So what --

17 MS. HAGY: (Interrupting) Please --
18 please let him answer. That was --

19 BY MR. MOGBANA:

20 Q. (Continuing) -- what departmental policy, what
21 specific departmental policy shows a deviation
22 from -- or abandonment from generally-accepted
23 police practices with respect to physical
24 evidence?

1 MS. HAGY: Objection, argumentative.

2 You can't police his answers. You need
3 to let him finish or we're going to have to stop
4 and call the judge.

5 THE WITNESS: So I want it in the
6 record I did not answer the previous question,
7 which I would like --

8 BY MR. MOGBANA:

9 Q. (Interrupting) This is the opportunity to do so.
10 This is the opportunity to do so.

11 A. This is not the same question. Do you want me to
12 continue with the question at hand? I'm going to
13 find the quote from the policy. Page 23. There
14 will be another one before that. Quote, "From a
15 police procedures standpoint, it was a
16 well-established, standard practice in 1993 to
17 photograph and accordingly record evidence as
18 found. The Rockford Police Department's own,"
19 quote, "'evidence and property handling
20 procedures,'" close quote, "in 1993 provided that
21 the evidence and control section of the department
22 would," quote, "'assume responsibility for the
23 transport, by US mail or other means, of evidence
24 that is sent to any outside agency for tests

1 and/or evaluation or to the court for
2 representation in a court of law,'" close quote.
3 "The procedure provided that the crime scene would
4 involve," quote, "'evidence such as fingerprints
5 that should be processed immediately to facilitate
6 the investigation,'" close quote. Next, "The
7 RPD's guidelines for criminal investigations also
8 emphasized," quote, "'physical evidence does not
9 lie, forget or change its story.'" Your role is to
10 collect and preserve as much physical evidence as
11 possible at any crime scene," close quote. "The
12 absence of evidence should also be recorded.
13 Officers are directed to refer a case for
14 follow-up if further examination of physical
15 evidence is likely to produce information likely
16 to solve the incident," cited. "Evidence from a
17 scene was to be collected by identification
18 officers and transported to the RPD's property and
19 evidence unit," quote from deposition.
20 "Detectives would use an ISP transmittal form to
21 identify evidence that they wanted tested by the
22 ISP crime lab," citation. Let me go to another
23 quote for --

24 Q. (Interrupting) For the record, you read from

1 Page 23 into Page 24; would that be a fair
2 statement?

3 A. Yes, but I haven't finished my answer.

4 Q. Go ahead. Go on.

5 A. (No response.)

6 Q. Mr. Clark, are we getting there or do you still
7 need more time?

8 A. No. I'm getting it. I have one. I wanted to
9 make sure that the citation as I recalled it about
10 interrogations -- that I have that citation as
11 well for your . . . Okay. One more document. So
12 on Page 31, I referenced beginning on -- I'm going
13 to start on Page 31, a partial paragraph. "There
14 is a written policy against," quote, "'lengthy
15 interrogations.'" Several officers like
16 Detective Scott said they were never given any
17 training on this policy," cited (sic). "As
18 experienced detectives they should have known that
19 the interrogation tactics used on Samantha would
20 impact the accuracy of her statement.
21 Furthermore, RPD should have ensured that
22 detectives were trained on this policy. If RPD
23 did not train its detectives on what constitutes
24 lengthy or coercive interrogation tactics, it

1 would be an egregious failure that would lead to
2 rampant coercive interrogations and false
3 statements." I have -- I printed out as part of
4 my handy dandy, be able to reach, COR Getty 2034,
5 which is a procedures policy, General Order 72-5,
6 "Rights of Accused Persons." And in this
7 seven-page order are clear and direct statements
8 regarding coercive interrogations, Miranda rights
9 and custodial interrogation, et cetera. And that
10 was what I had in mind when I wrote those two
11 paragraphs that I quoted into the record. I'll
12 wait for the next question.

13 Q. Do you agree with me that what you just
14 established is that the City of Rockford has
15 policy on those issues, has a written policy on
16 those topics that you talked about?

17 MS. HAGY: Objection, form, calls for a
18 legal conclusion.

19 A. The answer to that is in the administrative realm,
20 why should I do what you write or order me to do
21 when what you do thunders in my ears? So that's
22 what I meant by my previous testimony about
23 unwritten policies being policies.

24 MR. MOGBANA: Again, Mr. Clark, we're

1 going to stay here much longer if you continue
2 like this.

3 THE WITNESS: Sir, I'll stay here until
4 you're done. I'm happy. I'm content.

5 BY MR. MOGBANA:

6 Q. Do you agree that what you read out and what you
7 referenced establishes that the City of Rockford
8 has written policies on the topics that you've
9 talked about?

10 MS. HAGY: Objection, form,
11 mischaracterizes prior testimony and calls for a
12 legal conclusion.

13 A. There are written policies.

14 BY MR. MOGBANA:

15 Q. Thank you, Mr. Clark.

16 MS. HAGY: He didn't finish.

17 Go on. Keep going.

18 A. And I -- I answered the question previously. You
19 asked me about written policies.

20 BY MR. MOGBANA:

21 Q. All right. Hopefully I haven't covered this
22 before, but so one of the policies you said they
23 abandoned generally-accepted practices in regard
24 to physical evidence. You would agree with me

1 that the policy you read shows that the department
2 itself had a policy, right?

3 MS. HAGY: Objection, form, calls for a
4 legal conclusion.

5 A. Yes. There's a written policy about physical
6 evidence. It's cited in my report.

7 BY MR. MOGBANA:

8 Q. Thank you. Then Page 20 -- yeah. You said the
9 "RPD did not disclose information about the
10 benefits it provided to Windham." That was one of
11 your -- one of the opinions that you formed
12 regarding the department, right?

13 A. (No response.)

14 Q. Page 20.

15 A. All right.

16 Q. So my question is it wasn't the department that
17 failed to do anything. I mean the department is
18 not -- is not an animate object. It has to be
19 some individual; you would agree with me, right?

20 MS. HAGY: Objection, form,
21 mischaracterizes prior testimony, calls for a
22 legal conclusion.

23 A. (No response.)

24 BY MR. MOGBANA:

1 Q. Mr. Clark, do you understand the question?

2 A. The department's made up of persons, personnel.

3 Q. Yes. But their conduct that's attributed to the
4 department itself. So what I'm saying is that
5 this opinion, is it consistent with the department
6 being able to do anything as an inanimate object,
7 as an official entity?

8 A. Well, of course --

9 MS. HAGY: (Interrupting) Objection,
10 form, vague, confusing, calls for a legal
11 conclusion.

12 THE WITNESS: Of course, and that has
13 to do with the sergeant in particular in charge of
14 the investigative team.

15 BY MR. MOGBANA:

16 Q. So what you meant to say here is that someone
17 failed to disclose the information, not that the
18 entity that's the department failed to disclose
19 the information; would that be correct?

20 A. You're not accurate. That is not a correct
21 understanding of that statement.

22 Q. Correct me, please.

23 A. Yes, I will. So the definition -- I'll start with
24 the definition of a sergeant is enforces the

1 policies and the procedures of the department.

2 That is the No. 1 civil service definition of a

3 supervisor. Therefore, when the entire

4 investigative team fails, it is -- falls on the

5 department as a responsibility and -- through the

6 sergeant and the chain of command.

7 Q. Are you done?

8 A. Yes.

9 Q. Okay. So would it be fair to say that you're

10 imputing the conduct of the sergeant to the

11 department; is that an accurate statement?

12 MS. HAGY: Objection, form,

13 mischaracterizes his testimony, asked and answered

14 and calls for a legal conclusion.

15 A. Yes.

16 BY MR. MOGBANA:

17 Q. All right. Here you said that No. 7 -- not No. 7,

18 but this particular opinion according to one of

19 those that's formed against the department,

20 against the city is that the "Detectives skipped

21 basic steps and violated policies during their

22 search." You see that?

23 A. What page are you at?

24 Q. It's displayed. It's Page 23.

1 A. Okay. Yes.

2 Q. So which policies are you saying they violated?

3 MS. HAGY: Objection, form, calls for a
4 legal conclusion.

5 A. Evidence and property-handling procedures.

6 BY MR. MOGBANA:

7 Q. Of the Rockford Police Department, correct?

8 A. Yes.

9 Q. So the Rockford Police Department had the policy
10 regarding evidence and properly handling, correct?

11 MS. HAGY: Objection, form, calls for a
12 legal conclusion.

13 A. Yes.

14 BY MR. MOGBANA:

15 Q. All right. The next one you said, you said,
16 "Deviation from standards in developing ballistics
17 evidence." You see that?

18 A. Yes.

19 Q. All right. So what policy of the department
20 deviated from standards, what specific written
21 policy?

22 MS. HAGY: Objection, form, calls for a
23 legal conclusion.

24 A. Handling of physical evidence, which was cited the

1 previous answer.

2 BY MR. MOGBANA:

3 Q. All right. So my question is so the department
4 had a policy regarding this, a written policy
5 regarding this, correct?

6 MS. HAGY: Objection, form, calls for a
7 legal conclusion.

8 A. They had a policy.

9 BY MR. MOGBANA:

10 Q. All right. And the best you know, the policy was
11 an okay policy; would that be fair?

12 A. Was an okay policy?

13 MS. HAGY: Objection.

14 BY MR. MOGBANA:

15 Q. Yeah.

16 A. The written requirement for evidence to go
17 forthwith to the lab is correct.

18 Q. That's all I'm asking for at this time.

19 That's all I'm asking. All right. Said,
20 "Samantha Crabtree's statement bears hallmarks of
21 coercion," and you said that this is an opinion
22 that you formed against the department, right?

23 A. Yes.

24 Q. And didn't you point out that there was a specific

1 policy guiding how the department expects that
2 interviews or interrogations be conducted?

3 MS. HAGY: Objection, form, calls for a
4 legal conclusion, mischaracterizes prior
5 testimony.

6 BY MR. MOGBANA:

7 Q. Mr. Clark?

8 A. I cited General Order 72-5.

9 Q. So it was a general order regarding the
10 interrogations, correct?

11 A. Correct.

12 Q. All right. And then you also said that one of the
13 opinions that you formed was -- we're now looking
14 at Page 31, the first paragraph, which, you know,
15 you read -- you've read before. But I'm just
16 going to read the one sentence and -- so that we
17 can get into that. The top of the page it says,
18 "Unfortunately Schmidt and Forrester's tactics
19 seem to be in line with the commonly-accepted
20 practice in the Rockford Police Department." Do
21 you see that?

22 A. Yes.

23 Q. What facts did you review that led you to conclude
24 that those tactics were in line with the

1 commonly-accepted practice of the department?

2 MS. HAGY: Objection, form.

3 A. Well, one of the citations in the -- is the
4 Scott deposition, but it's throughout all the
5 depositions provided when asked about -- about the
6 interrogation, so . . .

7 BY MR. MOGBANA:

8 Q. How many depositions do you refer to?

9 A. All of the officers --

10 MS. HAGY: (Interrupting) Objection,
11 form.

12 THE WITNESS: All of the officers that
13 were part of the investigation into the murder,
14 and I listed them out and have identified them.
15 If you want me to go into those depositions, I can
16 find those records.

17 BY MR. MOGBANA:

18 Q. Well, we may have to get into them, but my
19 question here is how do you get from the
20 depositions you reviewed to conclude that it's a
21 commonly-accepted practice of the department?

22 MS. HAGY: Objection.

23 BY MR. MOGBANA:

24 Q. That's the question.

1 MS. HAGY: Objection, form, asked and
2 answered.

3 A. Let me see -- let me make a count. Because in
4 the -- the one was -- as you know, Forrester never
5 had an opportunity to be deposed. So in at least
6 eight of the depositions of the investigative
7 team, they all affirm that they were never trained
8 on Brady and they did not consider what they were
9 doing in the interrogation as contrary to their
10 policy of the department. That's the best way I
11 can answer that.

12 BY MR. MOGBANA:

13 Q. Thank you. You said about eight depositions;
14 would that be fair?

15 A. You want me to list out the names?

16 Q. No, don't need to list them. Just answer the
17 question. It's about eight depositions; is that
18 fair?

19 A. Six depositions to be precise.

20 Q. Okay.

21 A. And trial testimony of one that was not deposed.

22 Q. So seven detectives; is that fair?

23 A. Correct.

24 Q. Did you have -- did you review anything that

1 indicated to you the number of detectives that the
2 Rockford Police Department had at the time?

3 A. No.

4 Q. Okay. So your conclusion is that from seven
5 detectives out of an unknown number of total
6 detectives, you form an opinion that a specific
7 conduct was a common practice of the department;
8 did I phrase that accurately?

9 MS. HAGY: Objection, form, calls for a
10 legal conclusion, mischaracterizes prior
11 testimony.

12 A. My understanding of the testimony you are correct.

13 BY MR. MOGBANA:

14 Q. All right. The next -- not the next sentence but
15 the one following that, and I'm going to highlight
16 it. Okay. It's the next sentence. I'm just
17 going to read it. It says, "There was a written
18 policy against lengthy interrogations. Several
19 officers like Detective Scott said they were never
20 given any training on this policy." So who's
21 they?

22 A. The detectives involved in the interrogation.

23 Q. All right. So you're not -- you're not talking
24 about any officers apart from the seven that you

1 read their testimony; is that fair?

2 A. Yes.

3 Q. All right. The next paragraph starts with, "RPD
4 should have ensured that detectives were trained
5 on this policy." Did you review anything that
6 indicated the training that these officers
7 received?

8 MS. HAGY: Objection, form.

9 A. Nothing regarding the individual training records
10 of the officers involved that I can recall.

11 BY MR. MOGBANA:

12 Q. Did you review anything regarding the Illinois --
13 Illinois -- State of Illinois's law enforcement
14 standards curriculum, did you review anything that
15 would inform you about what a police officer
16 should know before he's sworn in?

17 MS. HAGY: Objection, form, calls for a
18 legal conclusion, confuses evidence.

19 A. I'm aware that there is a curriculum and I have
20 access to it and considered it as background
21 information. So are you -- and the training
22 includes Brady.

23 BY MR. MOGBANA:

24 Q. Sorry. I don't understand that. You said -- did

1 you review the curriculum or you didn't?

2 A. I did not reference or review the curriculum for
3 this report.

4 Q. Okay. You also said that's part of your opinion
5 that "RPD ignored evidence that undermines their
6 case against Pursley." So -- well, this should
7 be easy. You're referring to the specific
8 detectives, not the department as an artificial
9 entity, right?

10 MS. HAGY: Objection, form,
11 argumentative, calls for a legal conclusion and
12 mischaracterizes evidence.

13 A. The -- I was not given information regarding other
14 cases, so it's all the officers involved, as I
15 have indicated in the first paragraph of my
16 report.

17 BY MR. MOGBANA:

18 Q. And you also -- you talked a little bit about
19 training, and here at the bottom, "Detective
20 Hanson testified he was never given any training
21 on Brady." Do you see that?

22 A. Yes.

23 Q. All right. But we established that you didn't
24 review anything to show that -- what the officers

1 were actually trained on; is that fair?

2 MS. HAGY: Objection, form,
3 mischaracterizes prior testimony.

4 A. Yes. I did not see his training records.

5 BY MR. MOGBANA:

6 Q. Could it be possible that the officers were
7 trained but simply forgot; is that a possibility?

8 MS. HAGY: Objection, form, incomplete
9 hypothetical.

10 A. Well, that's per se incompetence and inadequate
11 training. So if they don't remember their
12 training, then the training's inadequate.

13 BY MR. MOGBANA:

14 Q. Again, Mr. Clark, is it possible that the officers
15 were trained but they forgot what they were
16 trained on?

17 MS. HAGY: Objection, asked and
18 answered.

19 A. I don't know in this case -- I don't know if it
20 was possible. I don't see how it could be, but I
21 don't know.

22 BY MR. MOGBANA:

23 Q. All right. You are -- have decades of experience
24 as a police administrator; is that fair?

1 A. Yes.

2 Q. And in your experience you have not encountered an
3 officer who has been trained but just forgot how
4 they were trained on a particular topic; is that
5 your testimony?

6 MS. HAGY: Objection, form, calls for a
7 legal conclusion.

8 MR. MOGBANA: Lindsay, that's
9 completely improper. This doesn't ask for a legal
10 conclusion. I'm just forming his experience.

11 Mr. Clark, go ahead.

12 A. Yeah. And I have not had that experience.

13 BY MR. MOGBANA:

14 Q. Thank you. Mr. Clark, how many articles have you
15 published regarding -- on the topic of police
16 practices that were published?

17 A. None.

18 Q. What about articles that were not published?

19 A. None.

20 Q. Have you published anything regarding crime scene
21 investigation?

22 A. No.

23 Q. What about not published crime scene
24 investigation?

- 1 A. No.
- 2 Q. Have you published any articles on forensic
3 investigation?
- 4 A. No.
- 5 Q. What about unpublished regarding forensic
6 investigation?
- 7 A. No.
- 8 Q. Have you taught any classes on police practices?
- 9 A. Have I what?
- 10 Q. Have you taught any classes, seminars, you know,
11 things like that or continuing education for law
12 enforcement officers?
- 13 MS. HAGY: Objection, form.
- 14 A. I've given lectures. Are we talking about after
15 my retirement or during my career?
- 16 BY MR. MOGBANA:
- 17 Q. During your -- at any time. At any time.
- 18 A. Oh. I was noted in my fitness reports as a
19 note -- as a -- as a excellent academy instructor
20 on particular four categories, and I have been
21 noted in appellate cases by name. I'll wait for
22 the next question. And I have lectured outside of
23 my retirement but not at police academies.
- 24 Q. And where did you lecture?

1 A. The last two have been at the University of
2 California, Irvine, law school. I've lectured at
3 other law schools. I've lectured at other groups,
4 at conventions and so forth.

5 Q. Have you presented a paper or a class for
6 continued education for other law enforcement
7 officers?

8 A. No.

9 MS. HAGY: Objection, form.

10 BY MR. MOGBANA:

11 Q. Okay. Regardless of topic, you know, you haven't
12 presented a paper for any other peers, any of the
13 other associations, things like that; is that
14 correct?

15 MS. HAGY: Objection, form.

16 A. Any other association?

17 BY MR. MOGBANA:

18 Q. Of law enforcement -- law enforcement officers.

19 A. No.

20 Q. All right. When was the last time you attended
21 any classes on police practices?

22 MS. HAGY: Objection, form.

23 A. Are you talking about academy classes?

24 BY MR. MOGBANA:

1 Q. No. Any continued education classes, keeping up
2 with the trends about what's going on in law
3 enforcement.

4 MS. HAGY: Objection, form.

5 A. I do that in review and conventions.

6 BY MR. MOGBANA:

7 Q. Sorry. You say you're reviewing conventions?

8 A. No, review and attending conventions.

9 Q. For example, what kind of conventions are you
10 referring to?

11 A. Well, the IACP would be an example.

12 Q. Okay.

13 A. I -- I subscribe and review all of the literature,
14 and I refresh the learning curriculum throughout
15 the country.

16 Q. Apart from the IACP, which other organization have
17 you attended their classes as part of an attempt
18 to bring yourself to current times regarding law
19 enforcement policy and practice?

20 MS. HAGY: Objection, form.

21 A. Other than that I have not attended classes.

22 BY MR. MOGBANA:

23 Q. So you've never attended any classes, correct?

24 A. As I understand the question --

1 MS. HAGY: (Interrupting) Objection,
2 form, mischaracterizes his testimony.

3 THE WITNESS: As I understand the
4 question, yes, I have not.

5 BY MR. MOGBANA:

6 Q. All right. So apart from the IACP's subscription
7 that you have, do you have any other
8 subscriptions?

9 A. Oh, yeah. I -- the American Corrections
10 Association, CALEA, DOJ, NIJ. Those are
11 information sources. And then there's some
12 periodicals, the IACP periodical. There's another
13 one that's pretty good. It's called, "Police
14 Magazine."

15 Q. I read that, too.

16 A. It's not bad.

17 Q. It's good. It's decent. Do you have any
18 certification in any area of law enforcement?

19 A. In any other area?

20 Q. In any area of law enforcement, a certification.

21 MS. HAGY: Objection, form.

22 A. I didn't, no, only what I retired out with, the
23 diploma with the -- the graduate of the Command
24 College and the POST advanced certificate, but I'm

1 retired now.

2 BY MR. MOGBANA:

3 Q. All right. Let's try and make this easier.

4 MS. HAGY: I think it's -- we might be
5 looking at another break pretty soon. Is there a
6 good stopping point coming up?

7 MR. MOGBANA: We will try to work
8 towards a -- you know, a stopping point.

9 BY MR. MOGBANA:

10 Q. So, Mr. Clark, I'm looking at -- you know, it's
11 No. 6 in the document, but I think it's 42 of 64,
12 the entire document which was produced. It's
13 subhead entitled, "Degrees and Certification." Is
14 this the entire -- the entire universe of your
15 certification regarding law enforcement?

16 A. No. That POST -- there's a plethora of
17 certifications, but I only cited the last -- the
18 highest level, which is advanced. There's -- and
19 then the Command College. So I just kept it
20 brief.

21 Q. Okay. So after 1988 did you receive -- have you
22 received any other certifications that are
23 regarding law enforcement?

24 A. No.

1 Q. Did you review anything in this case -- yeah, in
2 this case that indicated to you the conduct of any
3 of the officers or any Rockford police officer in
4 any other case apart from this Pursley
5 investigation?

6 MS. HAGY: Objection, form.

7 A. Only the universe of the investigative file.

8 BY MR. MOGBANA:

9 Q. All right. So you didn't -- you know, the
10 practice -- in here you refer to practice that you
11 observed from your review you related to what they
12 did in that case -- sorry, in this case; is that
13 fair?

14 A. Yes.

15 MS. HAGY: Objection, form.

16 THE WITNESS: Yes.

17 MR. MOGBANA: I don't believe I have
18 any other questions.

19 MR. HUOTARI: I have a few, but,
20 Lindsay, if you want to take a break, that's a
21 fine time to do it.

22 You want to meet back in five minutes?

23 THE WITNESS: Five minutes.

24 MS. HAGY: Great. Thank you.

1 MR. HUOTARI: Thank you.

2 (A brief recess was taken.)

3 MR. HUOTARI: Back on the record.

4 Good afternoon again, Mr. Clark. My
5 name is Joel Huotari. I represent two of the
6 defendant police officers.

7 BY MR. HUOTARI:

8 Q. You're familiar with good cop/bad cop, right?

9 A. Oh, sure.

10 MS. HAGY: Objection, form.

11 MR. HUOTARI: I'm the good cop this
12 afternoon. I'll let you guess what
13 Attorney Mogbana is. You can relax.

14 So I've got a few questions for you,
15 and we may refer to a couple of documents you've
16 seen already.

17 BY MR. HUOTARI:

18 Q. But to start out I want to kind of back up and
19 approach this from a, you know, 50,000-foot look.
20 When I read your report, it appears to me as that
21 your opinions are essentially that the police
22 could have done a much better job in investigating
23 this homicide; is that fair?

24 MS. HAGY: Objection, form,

1 mischaracterizes both his report and his prior
2 testimony.

3 A. I think that's a soft way of saying it. They were
4 significantly deficient. In that term, yeah, they
5 should have done a better job.

6 BY MR. HUOTARI:

7 Q. And some of the ways you've pointed out they could
8 have done a much better job, less deficient job
9 would have been to pursue other suspects, correct?

10 A. Correct.

11 Q. Another way would have been to submit evidence to
12 the lab sooner for testing, right?

13 MS. HAGY: Objection, form,
14 mischaracterizes prior testimony.

15 MR. POTTINGER: I'm going to weigh in
16 here, Lindsay. I mean I would just ask -- I mean
17 you conduct your deposition however you want, but
18 if you would review the standing order of
19 depositions, one of them you'll see in terms of
20 objections is the objection of mischaracterizing
21 the testimony is a -- by the local rule, the
22 standing order, is an improper objection. We'll
23 put that on the record.

24 And asked and answered should only be

1 used in the most extreme circumstances.

2 BY MR. HUOTARI:

3 Q. My question, Mr. Clark, was one of the ways the
4 police were deficient and could have done a better
5 job in your opinion was they could have submitted
6 evidence to the laboratory sooner than they did,
7 right?

8 A. Yes.

9 Q. And another way that you believe they were
10 deficient is they could have converted their notes
11 into police reports sooner, right?

12 A. Right. I think we need to say not could have,
13 should have.

14 Q. Right. They should have done that sooner,
15 correct?

16 A. Right.

17 Q. That's one of your opinions?

18 A. Yes.

19 Q. It is not your opinion, however, that any of the
20 defendant officers intentionally conspired to
21 frame Patrick Pursley for a murder that he didn't
22 commit; isn't that right?

23 MS. HAGY: Objection, form.

24 A. I agree.

1 BY MR. HUOTARI:

2 Q. That is correct?

3 A. Yes.

4 Q. It is not your opinion that any of the defendant
5 officers falsified evidence; isn't that also
6 correct?

7 MS. HAGY: Objection, form.

8 A. Nothing in the record indicates that.

9 BY MR. HUOTARI:

10 Q. All right. And because there's nothing in the
11 record, you don't have that opinion, do you?

12 A. I didn't write my report with that in mind.
13 Otherwise it would have had a section on filing a
14 false report.

15 Q. Okay. So if that opinion is not expressed in your
16 report, it's not an opinion you're going to be
17 testifying about at trial, fair?

18 MS. HAGY: Objection, form.

19 A. Well, I expect to answer any question, but as I
20 sit here, I don't anticipate the question would
21 arise.

22 BY MR. HUOTARI:

23 Q. And whether it arises or not, you have not
24 expressed that opinion in your report, correct?

1 A. You are correct.

2 Q. And is it not your opinion that any of the
3 defendants withheld exculpatory evidence?

4 MS. HAGY: Objection, form.

5 BY MR. HUOTARI:

6 Q. You have not expressed that opinion in your
7 report, have you?

8 A. Yes. That's the commentary on Brady, that they
9 did and should not have, and that commentary I can
10 show you the pages.

11 Q. Okay. Who specifically withheld what exculpatory
12 evidence?

13 A. Well, for example, Forrester withheld the evidence
14 of Windham being in trouble and him getting him
15 out of trouble. I'll say it that way.

16 Q. Okay. What other Brady violations are you
17 expressing an opinion of?

18 A. That it was -- well, let me see how I can express
19 it. I've already expressed my concerns about
20 Windham coming forward, and I've talked about
21 that. If -- let me say it this way: If there
22 were other circumstances of Windham being
23 entered -- entering into the case other than what
24 they allege and I -- or what they reported, then

1 that would be a very significant change.

2 Q. Of course. There's no evidence of that in the
3 record, is there?

4 MS. HAGY: Objection, form.

5 A. Only in the sense that there's -- when I read this
6 commentary, things don't make very much sense
7 about Windham at all without considering that he
8 was in the background before he was offered as an
9 unknown confidential informant.

10 BY MR. HUOTARI:

11 Q. So other than with respect to the purported
12 failure to disclose some kind of getting Windham
13 out of trouble by Forrester, are there any other
14 discrete Brady violations that you are expressing
15 an opinion on in your report?

16 MS. HAGY: Objection, form.

17 A. Nothing comes to mind as I sit here.

18 BY MR. HUOTARI:

19 Q. Okay. Your testimony a moment ago kind of
20 dovetails with another topic I wanted to ask you
21 about. Today you've expressed some suspicions and
22 some reservations about things that you just don't
23 think smell right, for lack of a better term. Do
24 you recall testifying to having suspicions today?

1 A. Yeah. That's a good way of saying it, smell
2 right.

3 Q. And with respect to those suspicions, would you
4 agree that those are different from your opinions
5 about actual wrongdoing that's supported by
6 evidence in the record?

7 A. Yes. I tried --

8 MS. HAGY: (Interrupting) Objection,
9 form.

10 THE WITNESS: I tried to put it in that
11 context.

12 BY MR. HUOTARI:

13 Q. Okay. So when you testified today about
14 suspicions, those are not opinions about actual
15 wrongdoing that took place, they're suspicions
16 about things that may or may not have happened
17 that you just really don't have an opinion one way
18 or the other about; is that fair?

19 MS. HAGY: Objection, mischaracterizes
20 prior testimony, form.

21 A. I don't think it's accurate to say opinions one
22 way or the other, but I was careful to contain
23 them when I wrote my opinions.

24 BY MR. HUOTARI:

1 Q. Is a suspicion the same as an opinion?

2 A. Of course it isn't.

3 MS. HAGY: Objection, form.

4 MR. HUOTARI: I'm sorry. You're going
5 to have to not talk over each other because the
6 court reporter isn't able to write down both of
7 your statements at the same time.

8 MS. HAGY: Sure. I'll make my --

9 MR. HUOTARI: (Interrupting) Lindsay,
10 you made your objection.

11 Mr. Clark, could you please answer the
12 question?

13 THE WITNESS: I said no, it doesn't.
14 They're not the same.

15 BY MR. HUOTARI:

16 Q. Okay. Are you employed in any other capacity
17 these days other than as a police practices
18 expert?

19 A. No.

20 Q. And you've been exclusively employed in that
21 capacity for a number of years now; is that right?

22 A. Yes.

23 Q. How much annually do you make serving as a police
24 practices expert?

1 MS. HAGY: Objection, form.

2 A. It's right at 160,000 a year because I'm a
3 one-person operation. I'll say it that way. That
4 seems to be the maximum capacity what I do, unless
5 I charged more.

6 BY MR. HUOTARI:

7 Q. You expect you'll make about 160 this year in
8 2021?

9 MS. HAGY: Objection, form.

10 A. I anticipate 160, maybe a little bit more.

11 BY MR. HUOTARI:

12 Q. Do you recall when Mr. Iasparro was questioning
13 you earlier about credibility determinations, you
14 would often say your report doesn't contain a
15 credibility determination but it contains a
16 professional opinion or a professional
17 determination. Can you explain the difference for
18 me?

19 MS. HAGY: Objection, form,
20 mischaracterizes prior testimony.

21 A. Yes, I can. You want me to?

22 BY MR. HUOTARI:

23 Q. Please.

24 A. Credibility is the truth, unquestioned truth.

1 Professional evaluation is what my -- I have
2 learned and considered to be likely based on my
3 professional experience.

4 Q. So if I understand you correctly, it's a
5 credibility determination that's informed by your
6 years of experience and your expertise in the
7 field; is that fair?

8 MS. HAGY: Objection, form,
9 mischaracterizes prior testimony.

10 A. No. It's better said more that it -- based on my
11 training and experience is more likely than not.

12 BY MR. HUOTARI:

13 Q. What is more likely than not?

14 A. That the ultimate truth would be in the hands of
15 the jury, as I said, not from me. But if I were
16 to ask questions, that's the way I would answer
17 it.

18 Q. I'm sorry. You said something is more likely than
19 not, and I'm not following what you're referring
20 to, that the person's testimony is truthful or
21 untruthful?

22 A. That it's likely to be credible or not credible
23 based on my experience or not credible until
24 verified, those types.

1 Q. Credible or not credible to whom?

2 MS. HAGY: Objection, form.

3 A. In this case to the investigative officers.

4 BY MR. HUOTARI:

5 Q. Okay. So, for example, if you can see on the
6 screen I've got Page 31 of your report up. And
7 this part that I'm highlighting says, quote,
8 "Samantha was prosecuted for perjury in connection
9 with the testimony she gave at Mr. Pursley's
10 trial. The fact that she testified contrary to
11 her grand jury testimony knowing that she would
12 go to prison lends credibility to her trial
13 testimony," unquote. What did you mean when you
14 said that in your report?

15 A. Well, exactly what I said. She -- she changes her
16 written statement at the risk of going to -- being
17 prosecuted criminally for perjury, and she does it
18 anyway, which is extremely risky to her.

19 Q. But so that makes her more believable to you?

20 A. Well, that's what I said, that lends credibility.
21 And I want to point out to you I didn't say makes
22 her credible, makes her absolutely credible. It
23 lends credibility.

24 Q. In your opinion that makes her more believable

1 than not?

2 MS. HAGY: Objection, form.

3 A. Yeah. My experience is that when someone steps
4 forward and says something and puts them at risk
5 of going to jail for saying it, that -- that takes
6 a lot of guts. And it's usually because they have
7 an overarching desire to tell the truth usually.

8 BY MR. HUOTARI:

9 Q. Did you know prior to recanting her sworn
10 statement and her grand jury testimony,
11 Samantha Crabtree received letters from
12 Patrick Pursley from jail threatening to, quote,
13 "Shred her shit like cheese if she did not come
14 correct," end quote, and recant her sworn
15 testimony. Were you made aware of that?

16 A. Yes. I reviewed all those letters.

17 Q. And what effect does that have on your opinion as
18 to her credibility when she recants after
19 receiving those threats?

20 A. It creates an alternate motive, fear of injury.
21 So it has to be weighed accordingly.

22 Q. And you've weighed that evidence of those threats
23 against the evidence that she is facing perjury
24 charges and you've come down on the side of

1 finding her more believable than not; is that
2 right?

3 MS. HAGY: Objection, form.

4 A. In my experience and based on my reading of the
5 letters, how they can be taken incidentally, that
6 I considered it that it lends more credibility to
7 her final statement when she recants what she said
8 in the beginning.

9 BY MR. HUOTARI:

10 Q. With respect to the alleged coercion of
11 Samantha Crabtree, in your opinion who coerced
12 her?

13 A. The interrogators.

14 Q. Who were they?

15 A. Oh. Well, it's -- it's listed in the report.

16 Q. Forrester and Schmidt?

17 A. I remember some of the things that she said were
18 said to her, but I can't remember exactly -- I'd
19 have to go into the report and take a look --

20 Q. (Interrupting) The names Forrester and Schmidt
21 ring a bell to you?

22 MS. KEEN: Joel, I'm sorry. We're
23 talk -- I'm hearing you talk at the same time as
24 the witness. I'm having trouble following.

1 BY MR. HUOTARI:

2 Q. Do you recall the names Forrester and Schmidt?

3 A. I do. And one of the ones that stuck in my mind,
4 "You're not going to see your children until
5 they're 40."

6 Q. Were those the interrogators you're referring to
7 as having committed the coercion you describe?

8 A. You know, I could not hear what you said. I'm
9 sorry.

10 Q. Were those the interrogators that in your opinion
11 coerced Samantha Crabtree?

12 A. Oh, that's a very coercive statement in my
13 opinion.

14 Q. Well, I'm asking in your opinion. It's your
15 opinion that she was coerced, right?

16 A. Of course.

17 MS. HAGY: Objection, form.

18 BY MR. HUOTARI:

19 Q. And who coerced her?

20 A. Those who interrogated her.

21 MS. HAGY: Objection, asked and
22 answered.

23 MR. HUOTARI: Really, Lindsay, that was
24 answered? I haven't heard that yet. Maybe I'm

1 not hearing so well.

2 THE WITNESS: Let me give you the
3 reference in my report. It starts with -- on
4 Page 27. And I tried to give it pretty extensive
5 treatment about the coercion.

6 BY MR. HUOTARI:

7 Q. If you look at your screen, sir, I've got Page 30
8 of your report pulled up. It says, "The tactics
9 Schmidt and Forrester admitted to using on
10 Samantha, including interrogating her for ten
11 hours even though she refused food, taking a
12 statement in one crime while threatening to charge
13 her for another crime can be coercive." Is that
14 the coercion that you've expressed your opinion
15 about?

16 A. Well, that was the concluding -- close to the
17 concluding remarks in that whole treatment as I
18 said.

19 Q. Are those the interrogators that in your opinion
20 did the coercing?

21 A. Yes.

22 Q. And you've said that depriving her of food for
23 ten hours and telling her that she won't see her
24 children for 40 years were coercive, right?

1 A. Yes.

2 Q. What other manners, if any, was Samantha Crabtree
3 coerced in here?

4 A. What other -- well, physically and mentally as
5 indicated.

6 Q. By depriving her food and telling her she wouldn't
7 see her kids in 40 years?

8 MS. HAGY: Objection, mischaracterizes
9 his testimony and report.

10 A. Those are two. There are others.

11 BY MR. HUOTARI:

12 Q. How many others?

13 A. Well, keeping her in the interrogation process for
14 two hours, at least two hours and then longer
15 when -- until she produced the signed statement.
16 Since we don't have -- since we don't have the
17 recordings, we don't know how mentally the
18 interrogation went except for what she says, that
19 she was afraid and that she was willing to give
20 false testimony just to get herself out of
21 trouble. Those are my -- that's my way of saying
22 it.

23 Q. In your opinion, are there any other examples of
24 how Samantha Crabtree was coerced or the subject

1 of threats by the interrogators?

2 MS. HAGY: Objection, form.

3 A. Well, I think we covered the denying the physical
4 food, drink and less stressful environment would
5 be one. The verbal threat another. And I --

6 BY MR. HUOTARI:

7 Q. (Interrupting) Verbal -- hold on. Before you
8 move on --

9 MS. HAGY: (Interrupting) Please let
10 him finish.

11 MR. HUOTARI: Excuse me, Lindsay.
12 Excuse me.

13 MS. KEEN: No. Stop it.

14 MR. HUOTARI: Let me finish my
15 question. These interruptions are not productive.

16 MS. KEEN: You have been bullying and
17 it's just not cool. Stop it.

18 MR. HUOTARI: I'm not trying to bully
19 anybody. I'm trying to get my question on the
20 record, and the poor court reporter is going to
21 burn up her machine the way she's typing.

22 MS. KEEN: Just stop it.

23 Everybody stop interrupting Mr. Clark.
24 Knock it off.

1 MR. HUOTARI: You can have time to make
2 your objection, and then we'll go on with the
3 answer to the question, okay?

4 MS. HAGY: I'm just asking you not to
5 interrupt him. That's all.

6 MR. HUOTARI: Well, he said threats.

7 MS. HAGY: It's pretty simple.

8 MR. HUOTARI: I asked him a question.
9 He identified threats for the first time after
10 having said there was one threat. So I'm asking
11 him before he goes on to list other topics in
12 response to my question --

13 BY MR. HUOTARI:

14 Q. What other threats, Mr. Clark, are you talking
15 about besides the threat --

16 MS. KEEN: (Interrupting) Joel, you
17 know you're not allowed to cut the witness off.

18 BY MR. HUOTARI:

19 Q. (Continuing) -- to take her children away until
20 they're 40 years old?

21 MS. KEEN: Joel, you know you're not
22 supposed to interrupt the witness. That's all.
23 Just stop doing it.

24 MR. HUOTARI: You can make your

1 objection now, Lindsay.

2 MS. HAGY: Well, objection, form,
3 mischaracterizes testimony.

4 And please just let him finish his
5 answer. It's pretty simple.

6 BY MR. HUOTARI:

7 Q. Mr. Clark, please answer the question.

8 A. Thanks. So I think I tried to condense it down
9 into the last paragraph on Page 30. And I say,
10 "The tactics Schmidt and Forrester admitted to
11 using on Samantha, included interrogating for ten
12 hours, even though she refused food and taking her
13 statement in one crime while threatening to charge
14 her with another crime."

15 Q. Yeah. I just read that. I'm sorry. Go ahead.

16 A. Should I continue?

17 Q. Please. I thought you were done.

18 A. Oh, no. So those are coerced, and that's -- I saw
19 in the record. Then she adds a statement about
20 never seeing her children for all practical
21 purposes and being implicated in the murder. So
22 those I think -- that's all I -- -- that's the
23 best way I can answer it. I think that's implicit
24 in the record.

1 Q. Yeah. We've talked about --

2 MS. HAGY: (Interrupting) I'm sorry.

3 I just need to raise -- I know Mr. Bhave said we
4 need to finish at 4:00, but you still have
5 questions and we still have some remaining
6 questions.

7 MR. HUOTARI: Yes. That's why I'd like
8 to keep moving. Thanks.

9 MR. BHAVE: Okay. I just want to say
10 that I do not need to leave at 4:00. I'm here,
11 and I do have some questions afterwards as well.

12 MS. HAGY: Okay. Great.

13 MR. HUOTARI: Thank you, Counsel.

14 BY MR. HUOTARI:

15 Q. Mr. Clark, we've covered each of those topics you
16 just identified. I actually read to you that same
17 sentence a moment ago. My question was is there
18 anything else in addition to that that in your
19 opinion constitutes coercion or threats to
20 Miss Crabtree?

21 MS. HAGY: Objection, form,
22 argumentative, misstates prior testimony.

23 A. As I've answered the question, I think I covered
24 all the aspects.

1 BY MR. HUOTARI:

2 Q. Okay. There's nothing else?

3 A. The length is -- the length of keeping her with
4 them for the ten-hour period is a considerable
5 factor.

6 Q. Right. Anything else?

7 A. No.

8 Q. Thank you. Did you have an opinion that
9 Steve Pirages committed any acts of wrongdoing in
10 this case?

11 MS. HAGY: Objection, calls for a legal
12 conclusion, form.

13 A. Who did you mention?

14 BY MR. HUOTARI:

15 Q. Steve Pirages, Steve or Stephen.

16 A. Yeah, I see it. He was deposed. I can't remember
17 specifically what he was involved in. I'd have
18 to -- nothing comes to mind, though, at this
19 point. I'd have to take a look at where he
20 appears in my report.

21 Q. Certainly there's nothing in your report that
22 expresses an opinion that Steve Pirages
23 individually committed any acts of wrongdoing in
24 this case; is that right?

1 MS. HAGY: Objection, form.

2 A. Yeah. It's only as a member of the investigative
3 team there. He's not listed by name.

4 BY MR. HUOTARI:

5 Q. And is it the same answer with respect to
6 Bruce Scott?

7 MS. HAGY: Objection, form,
8 mischaracterizes prior testimony and his report.

9 A. Yeah. Neither one of -- neither one testified at
10 trial and were deposed. And as I sit here, I
11 can't remember what there was in their deposition.

12 BY MR. HUOTARI:

13 Q. Yeah. That wasn't my question, sir. What I'm
14 asking you is whether you have an opinion that
15 Detective Bruce Scott committed any individual
16 acts of wrongdoing.

17 MS. HAGY: Objection, form, calls for
18 speculation and mischaracterizes his report.

19 Can we have a minute for him to be able
20 to look at his report, because this is kind of
21 verging on a memory test.

22 MR. MOGBANA: Lindsay, that's improper.
23 You just cannot do that. If the witness requests
24 it, we'll oblige the witness, but you don't do

1 that. It's not proper.

2 MS. HAGY: You're not my boss. I'm
3 going to conduct myself just like you're
4 conducting yourself.

5 I'm asking him for a couple minutes to
6 look at his report.

7 BY MR. HUOTARI:

8 Q. Mr. Clark, would it help for me to direct you to a
9 particular portion of your report that's on the
10 screen?

11 A. Of course it would.

12 Q. What page?

13 A. Well -- oh. I thought you had something in mind.
14 I'm sorry.

15 Q. It's your opinions I'm asking you about, sir. If
16 you don't have an opinion that Bruce Scott did
17 anything wrong, that's okay. If you do have an
18 opinion that he did something wrong, please tell
19 me.

20 MS. HAGY: Objection.

21 A. I would have to review the report, see if I
22 mention -- I comment on him. And I can't do a
23 search, electronic search because this computer's
24 captured, so . . .

1 BY MR. HUOTARI:

2 Q. As you sit here today, you can't recall any
3 particular acts of wrongdoing by Detective Scott;
4 is that correct?

5 MS. HAGY: Objection, form.

6 A. Scott appears on Page 11. Any -- I criticize him
7 for not giving contemporaneous updates and reports as
8 far as Scott's listed.

9 BY MR. HUOTARI:

10 Q. Contemporaneous? What's a contemporaneous report?

11 A. "Here it appears the primary or lead detectives in
12 the case were Forrester, Schmidt and Scott. They
13 would have been regularly updated on all
14 developments and also made sure that supervising
15 Sergeant Pirages was also informed of all major
16 developments. It is standard practice to be
17 expected that the lead/case detectives are aware
18 of all information contained in the police file."
19 And that is in regards to information giving --
20 being provided in real time.

21 Q. What's a contemporaneous report?

22 MS. HAGY: Objection, form,
23 argumentative.

24 A. It's in terms of actual time instead of being

1 delayed.

2 BY MR. HUOTARI:

3 Q. So it's your opinion that the police officers
4 should be typing out police reports in real time
5 as they're investigating a murder?

6 MS. HAGY: Objection, form,
7 argumentative.

8 A. No. But certainly very close when the -- when the
9 process lends itself, which is typically no more
10 than a day later.

11 BY MR. HUOTARI:

12 Q. Is there anything wrong with taking notes during
13 an investigation that are subsequently used to
14 author a police report?

15 A. It depends on --

16 MS. HAGY: (Interrupting) Objection,
17 form.

18 THE WITNESS: (Continuing) -- the
19 quality of the notes and the fact that they are
20 preserved as evidence.

21 BY MR. HUOTARI:

22 Q. Do you have any other criticisms of Defendant
23 Bruce Scott other than not taking contemporaneous
24 notes or reports?

1 MS. HAGY: Objection, form.

2 A. Let me look. Let me find out where I mention him
3 again. He was mentioned again on Page 14 on the
4 second paragraph, and he's criticized and
5 mentioned as being part of the retaining the slugs
6 and the casings and not turning them in to the
7 lab.

8 BY MR. HUOTARI:

9 Q. So your other criticism of Bruce Scott is that he
10 didn't turn over the evidence to the ISP crime lab
11 fast enough?

12 MS. HAGY: Objection, form.

13 BY MR. HUOTARI:

14 Q. Is that your opinion, sir?

15 A. Well, yes. And, by the way, it's -- he's
16 listed -- his deposition's listed on --
17 parenthetically in the next paragraph.

18 Q. What other opinions of Bruce Scott's shortcomings
19 do you have?

20 A. I didn't hear that, sir.

21 Q. What other opinions do you have about Bruce Scott
22 and the purported deficiencies in this case?

23 A. I'm giving a quick scan of my report.

24 (Discussion off the record.)

1 MS. HAGY: Once we get through the
2 answer to this question, I'm going to ask for a
3 five-minute break.

4 MR. MOGBANA: That's fine.

5 THE WITNESS: Okay. Scott is mentioned
6 again on Page 27. It has to do with the
7 interrogation of Samantha Crabtree, and there's a
8 paragraph, second paragraph on the page. Do you
9 want me to read it into the record?

10 BY MR. HUOTARI:

11 Q. No. I just want to know your opinion of what
12 wrongdoing Detective Bruce Scott is guilty of.

13 MS. HAGY: Objection, form.

14 A. Scott's report contains almost no information
15 regarding the search as -- but Forrester says to
16 refer to the report. The report's deficient.

17 BY MR. HUOTARI:

18 Q. Okay. What else?

19 A. I'm continuing. Okay. Scott's mentioned again on
20 Page 31 on the interrogation. And Scott in his
21 deposition says he was not given any training on
22 lengthy interrogations.

23 Q. He did? Okay. Anything else?

24 A. Okay. Let me -- continuing on. Okay. That would

1 be the extent of my commentary on Scott in the
2 report.

3 Q. And do you have any opinions about Bruce Scott or
4 Steve Pirages that aren't expressed in your
5 report?

6 A. No. I think they're expressed in the report.

7 MS. HAGY: Can we have a five-minute
8 break?

9 MR. HUOTARI: Oh, sorry. You need a
10 break? Oh, okay. Sure, five minutes.

11 THE WITNESS: Five minutes?

12 MR. HUOTARI: Yeah. We'll be back at
13 4:27 our time.

14 MR. MOGBANA: That's fine.

15 (A brief recess was taken.)

16 MR. HUOTARI: Okay. Mr. Clark, are you
17 ready to go back on the record?

18 THE WITNESS: I'm ready.

19 BY MR. HUOTARI:

20 Q. In setting out to develop your report and form
21 your opinions, what presumptions did you rely
22 upon?

23 MR. HUOTARI: I didn't get it if you're
24 trying to object.

1 A. I think I answered it earlier on in the deposition
2 that -- and I explained that I have this material
3 with an end result as expressed by the judge and
4 that I took the very best care -- and I think I
5 did it -- not to -- to review it from the lens of
6 the ongoing investigation as when the murder
7 occurs and they respond, what should they be
8 doing. And that's the way I approached the
9 report. That's the way I commented on the
10 missteps, the failures to follow the proper
11 procedures and how that creates opportunities for
12 writing reports and -- that exclude exculpatory
13 facts or leads that are required, those things.
14 So -- but I clearly acknowledge at the end of the
15 day we have a judicial finding. This gun was not
16 the murder weapon.

17 BY MR. HUOTARI:

18 Q. And that's a presumption you relied upon in
19 formulating your opinions?

20 A. No. Please. See -- no, that's not. I was
21 careful not to allow it to formulate my opinions.
22 That's what I was trying to explain to you.

23 Q. Did Judge McGraw's opinion that Patrick Pursley is
24 in fact innocent constitute a presumption that you

1 relied upon in formulating your opinions?

2 A. No. It's an acknowledgment of the judicial
3 review, the second trial and the result of that
4 second trial. I have taken the best care I can to
5 explain in this deposition I know that occurred.
6 The finding was unequivocal, not the murder
7 weapon. But I went back and looked at it as an
8 ongoing investigation where the officers are
9 called to the scene and someone's been shot to
10 death.

11 Q. So did you have any presumptions when you set out
12 to formulate your opinions in this case?

13 A. Absolutely not. And I hope that that's clear in
14 my testimony and the report. It is, for example,
15 not turning the slugs and the casings over
16 immediately to the lab to get to what they can
17 tell you about the -- the investigator about the
18 crime is not expressed with the knowledge that
19 that eventually worked out to not -- to
20 documenting it was not the murder weapon.

21 Q. When you set out to formulate your opinions, did
22 you presume that Samantha Crabtree's recantation
23 was truthful and an honest recitation of the
24 facts?

1 A. Well, I think you're asking me again to explain
2 the statement. I think her recantance (sic) is
3 very significant in light of what it meant to her
4 in terms of incarceration and punishment for
5 perjury.

6 Q. Yeah. We went over that. Would you agree, sir,
7 that it's very important that police not
8 misrepresent the facts when they are documenting
9 an investigation?

10 A. Yes.

11 Q. Would you agree that it's very important that
12 witnesses not misrepresent the facts when
13 providing testimony?

14 MS. HAGY: Objection, form.

15 A. Well, I think that's implicit, but I will agree,
16 they shouldn't -- I think what you're saying is
17 witnesses shouldn't lie.

18 BY MR. HUOTARI:

19 Q. And do you think that expert witnesses are held to
20 the same standard about misrepresenting the facts?

21 MS. HAGY: Objection, form,
22 argumentative.

23 A. I agree, and I took -- in my regard I just took an
24 oath to tell the truth.

1 BY MR. HUOTARI:

2 Q. And do you think that expert witnesses who do
3 misrepresent the facts should be deemed to be less
4 than credible?

5 MS. HAGY: Objection, form,
6 argumentative, calls for a legal conclusion.

7 A. Yes.

8 BY MR. HUOTARI:

9 Q. Do you recall in your report on Page 31
10 writing that, quote, "Several officers like
11 Detective Scott said that they were never given
12 any training on this policy"? And specifically
13 the policy referenced is a written policy against
14 lengthy interrogations.

15 A. That's in the first paragraph on Page 31.

16 Q. That's right. You recall writing that?

17 A. Yes, I do.

18 Q. And is that true?

19 A. That's my recollection of the depositions.

20 Q. I'm going to show you Bruce Scott's deposition. I
21 want you to take a look at that and tell me if you
22 still believe that line in your report is true or
23 whether it's a misrepresentation of Bruce Scott's
24 testimony. Your report cited the Bruce Scott

1 deposition in 93 to 95. I pulled his deposition
2 transcript up and put it on the screen for you.
3 Page 93, relevant testimony starts where it's
4 highlighted on Line 7. It reads, "Question:
5 Okay. I want to direct your attention to -- "
6 it's now at the very top of the next page, which
7 is Section B(3), so the very first section of the
8 next page it says, quote, "lengthy interrogation
9 or incommunicado incarceration before a statement
10 is made is strong evidence that the accused did
11 not freely waive his rights. Do you see that?"
12 Answer by Bruce Scott: "I see it." "Question:
13 Okay. Do you recall ever being trained on what
14 constitutes a lengthy interrogation?" And there's
15 an objection, which I won't read into the record,
16 followed by another question. "Mr. Scott, can you
17 answer the question if you know the answer?"
18 "Answer: I'd say no, I can't remember," end
19 quote. Was that an accurate recitation of
20 Mr. Scott's testimony during his deposition, sir?
21 A. Yes.
22 Q. And is that consistent with your report that
23 claims Detective Scott said he was never given any
24 training on that policy?

1 MS. HAGY: Objection, form.

2 A. I understand the point, and I would agree quoting
3 the -- the exact testimony would be best, so I
4 don't contest his answer.

5 BY MR. HUOTARI:

6 Q. So the statement in your report is a
7 misrepresentation of Bruce Scott's testimony,
8 isn't it?

9 A. No.

10 MS. HAGY: Objection, form,
11 mischaracterizes the evidence and the prior
12 testimony.

13 THE WITNESS: No. That's how I took
14 his answer as to indicate not trained.

15 BY MR. HUOTARI:

16 Q. So your testimony then is Bruce Scott said he was
17 never trained on that policy; is that what you're
18 saying?

19 A. No. Let me be more precise. When a person
20 cannot -- I was quoted in a -- in the 9th circuit.
21 Inadequate training is tantamount to no training.
22 And here we have a seasoned detective on such a
23 fundamental aspect of interrogation as coercion
24 who says, "I don't remember being trained." Now,

1 you've asked me, "Well, does that mean he wasn't?"
2 That's the way I took the answer, and so I'm glad
3 for the clarification.

4 Q. Are you saying he testified he wasn't trained --

5 MS. HAGY: (Interrupting) I think he's
6 not finished.

7 Are you finished?

8 THE WITNESS: Yes. I think I answered
9 the question.

10 MS. HAGY: Okay.

11 BY MR. HUOTARI:

12 Q. Are you testifying, sir, that Bruce Scott
13 testified he was never trained on coercion?

14 A. I've clarified my understanding of that, and I
15 acknowledge I could have quoted him. For the sake
16 of brevity, I did not. And so in my answer
17 here -- well, I've answered he's a detective that
18 is -- this is so fundamental. It's like -- as I
19 said earlier, it's like washing your hands before
20 you go into surgery when you're a doctor. And he
21 says he can't remember.

22 Q. You realize the murder was 28 years ago or so,
23 right?

24 A. Of course I remember the dates of the -- the

1 murder.

2 Q. Do you recall training you received three decades
3 ago?

4 A. Well, I remember all the training about coercion
5 and police procedure and recovery of evidence and
6 how to do an investigation. I remember that very
7 well.

8 Q. Do you recall specific policies that you were
9 trained on 30 or so years ago?

10 A. I remember the -- where all of that was embedded
11 in the department's manual of policy and
12 procedures, and it was called, "Detective
13 Operations." I know -- and that I remember, and I
14 could go to it even to this day.

15 Q. What was the title of the policy that you were
16 trained on 30 years ago about lengthy
17 interrogations?

18 MS. HAGY: Objection, form,
19 argumentative.

20 A. My training was that if there is coercion, then it
21 taints the statement, and there are also
22 requirements when the statement is given. But
23 there is always going to be a test of is the
24 statement coerced and, if so, to what degree and

1 therefore can it be considered reliable.

2 BY MR. HUOTARI:

3 Q. You honestly believe that retired police officers
4 should be expected to have an independent
5 recollection of individual policies that they were
6 trained on 28 or more years ago?

7 MS. HAGY: Objection, form,
8 mischaracterizes his testimony, argumentative.

9 A. To that extent, yes, just as I do.

10 BY MR. HUOTARI:

11 Q. What color car were you driving in 1993?

12 MS. HAGY: Objection, form,
13 argumentative, irrelevant.

14 A. My detective car was unmarked brown with a
15 six-foot antenna on spring -- on a spring.

16 BY MR. HUOTARI:

17 Q. And what about your personal vehicle?

18 A. And had a radio that gave me access to two
19 frequencies and had a detachable light and an
20 internal siren.

21 Q. And what about your personal vehicle?

22 MS. HAGY: Objection. This is just
23 wasting time at the end of a really long
24 deposition where other people --

1 MR. HUOTARI: (Interrupting) Yeah. I
2 agree. Let's get down to it.

3 BY MR. HUOTARI:

4 Q. What about your personal vehicle?

5 A. A white and blue Pinto two-door.

6 Q. What was your address?

7 MS. HAGY: Objection. That's totally
8 beyond the scope of this. Let's just move
9 forward.

10 A. 118 Sandalwood, Glendora, California.

11 MR. HUOTARI: I'll turn it over to one
12 of the defense attorneys at this point.

13 Thank you for your time, Mr. Clark.

14 MR. BHAVE: This is Sunil. I have a
15 few questions for Mr. Clark.

16 Mr. Clark, can you see me?

17 THE WITNESS: I see you.

18 MR. BHAVE: And you can hear me okay?

19 THE WITNESS: Yes, I can.

20 MR. BHAVE: The facial hair is starting
21 to grow, so I apologize for the informality here.

22 THE WITNESS: You look good.

23 MR. BHAVE: So do you, Mr. Clark.

24 BY MR. BHAVE:

- 1 Q. Mr. Clark, you are not a firearms and toolmarks
2 examiner, correct?
- 3 A. Correct.
- 4 Q. And you don't have any training in conducting
5 microscopic examinations of ballistics, such as
6 cartridge casings and bullets, correct?
- 7 A. To the contrary, that it's done and there's a
8 process and to match test fires to the evidence
9 slug and how to also match tool firing print marks
10 and other toolmarks from the -- from the alleged
11 murder weapon. I'm aware of the process.
- 12 Q. But, Mr. Clark, you're not trained in that process
13 of actually physically conducting the
14 examinations, correct?
- 15 A. Correct.
- 16 Q. And in this case you did not examine any of the
17 bullets or cartridge casings under a comparison
18 microscope, correct?
- 19 A. Correct.
- 20 Q. Mr. Clark, can you turn -- I'm not going to share
21 a screen with you because I think you have the
22 report in front of you.
- 23 A. I have it.
- 24 Q. Okay. Would you turn to Page 25 of your report

1 starting with the section that states, "Deviations
2 from standards in developing ballistics evidence."
3 A. I have it.
4 Q. Okay. In the first sentence you reference, "Two
5 firearms experts retained by Mr. Pursley in 2012
6 who conducted an independent and thorough
7 examination comparing the test fires from the
8 recovered Taurus 9mm to the bullets and casings
9 from the Ascher murder." Do you see that first
10 sentence?
11 A. I see it.
12 Q. What are you basing your assertion that the
13 examination by Mr. Pursley's two firearm experts
14 was an independent and thorough examination?
15 A. Mainly from the judge's recognition and commentary
16 about their testimony.
17 Q. And aside from the judge's recognition and
18 commentary, are you basing your opinion that
19 the -- Pursley's experts conducted an independent
20 or thorough examination on anything else?
21 A. Only that I saw the documents. I think it's Bates
22 stamped early on in the file that I have where it
23 was sent to -- I saw where Murdock got it on --
24 was sent to him on May 14, 2012.

1 Q. What documents were those?

2 A. Correspondence from the sergeant in Rockford to
3 Murdock himself explaining it was being shipped to
4 the sheriff's department there in Contra Costa, I
5 think. I think it was Contra Costa. And the
6 procedure that it was coming, there are some
7 procedural things and feel free to contact him by
8 phone or email.

9 Q. But, Mr. Clark, you didn't review any of the
10 examination reports or documentation created by
11 Mr. Murdock in the course of his ballistics
12 examination, did you?

13 A. Nothing I remember in terms of his work, only his
14 testimony.

15 Q. Did you review Mr. Murdock's testimony in
16 preparation of your reliance in preparing your
17 expert report?

18 A. Yes.

19 Q. Can you show me where that -- maybe I just must
20 have missed it. Could you show me where on the
21 start of your report you reference Mr. Murdock's
22 testimony?

23 A. Let me see where it is here. He's not listed on
24 the -- let me see. Murdock is not listed in my

- 1 listing of testimony, but he is in the trial. And
2 I would have to find the . . . I think it's going
3 to be somewhere probably in Pursley -- Page 3,
4 Item 6, in that listing. Do you want me to . . .
- 5 Q. Could you just let me know where in your expert
6 report you've identified reviewing Mr. Murdock's
7 trial testimony?
- 8 A. Only in the -- in the statement that you read, and
9 I thought you don't -- wanted to know where in the
10 listing of material reviewed that testimony
11 appears.
- 12 Q. And let me back this up. Did you or did you not
13 review Mr. Murdock's testimony in preparation of
14 your expert report?
- 15 A. I did in terms of the trial testimony.
- 16 Q. Okay. And where in your expert report did you
17 document that you reviewed that trial testimony?
- 18 A. Other than what -- it's going to be in the list
19 either on page -- I think it's in that section
20 on 6.
- 21 Q. Okay. And where in 6?
- 22 A. Well, that's the point. We'll have to take a
23 break, and I'll -- I can pull it up for you, but
24 it's just going to take a look. I got to find it.

1 You want me to do that? I think it's uncontested
2 based on what the judge's says, and he comments on
3 the testimony offered to him.

4 Q. I want to stick with where the testimony is,
5 because I'm looking at every sub-item in
6 Section 6, and nothing sticks out as this would
7 include testimony from Mr. Murdock. I'm going off
8 your titles and your subsections.

9 A. Okay. Well, then I would -- not anticipating this
10 type of a question, I will -- shall we take a
11 break and let me do a little search, because I
12 need the screen for -- to make it more -- to
13 quickly go to that file.

14 Q. We can move on. We can move on. Now, Mr. Clark,
15 if Judge McGraw had determined that Dan Gunnell's
16 examination was proper and correct, would you have
17 concluded that Mr. Pursley's two firearms experts
18 had conducted an independent and thorough
19 examination?

20 MS. HAGY: Objection, form, incomplete
21 hypothetical.

22 MR. BHAVE: Go ahead.

23 A. I just never considered anything like that because
24 that's not what Judge McGraw found to be true.

1 BY MR. BHAVE:

2 Q. Do you know whether Judge McGraw is a firearms
3 examiner?

4 A. Oh, my goodness. I took it that he was not.

5 Q. And so just to be clear, your conclusion that
6 Mr. Pursley's experts conducted a proper
7 examination is just based on a finding of
8 Judge McGraw?

9 A. No. It's supported by the -- Mr. Murdock and
10 Mr. Coleman's reports.

11 Q. And those reports -- those are inconsistent with
12 Mr. Gunnell's report, correct?

13 A. Yes.

14 Q. So why do you believe Mr. Murdock and
15 Mr. Coleman's reports and not Mr. Gunnell's
16 reports?

17 MS. HAGY: Objection, form.

18 MR. BHAVE: Go ahead.

19 THE WITNESS: (No response.)

20 MR. BHAVE: Go ahead, Mr. Clark.

21 A. I think the best of all sources of answer -- for
22 this answer to the question is Page 10 of the
23 report of proceedings on January 16, 2019, in
24 People versus Patrick Pursley where the judge

1 discusses at significant extent of the Coleman's
2 and Murdock's evaluation of the alleged murder
3 gun.

4 BY MR. BHAVE:

5 Q. Okay. So then again let's --

6 A. (Interrupting) These are the -- these are the --
7 sir, please. The Rockford evidence regarding the
8 alleged murder weapon. Now --

9 Q. (Interrupting) Okay. So --

10 A. (Continuing) -- there are -- in my -- and let me
11 say this last. I'll try to be quick. I have
12 three boxes of material that was sent to me about
13 this case, and in that is more testimony from
14 Murdock and -- regarding the techniques, methods
15 and reasons for his conclusions. I'll wait for
16 the next question.

17 Q. Mr. Clark, are you an expert in the techniques and
18 methods of conducting a scientific ballistics
19 examination under a comparison microscope?

20 A. I think you asked me that question. I said no.

21 Q. And so I'll go back. You referenced
22 Judge McGraw's findings in 2019 again. Other than
23 those findings, is there any reason for you to
24 believe that Mr. Murdock's conclusions or

1 Mr. Coleman's conclusions regarding the ballistics
2 examinations are correct and Mr. Gunnell's
3 conclusions are incorrect?

4 MS. HAGY: Objection, asked and
5 answered at length now.

6 A. Yes.

7 MR. BHAVE: You can answer.

8 BY MR. BHAVE:

9 Q. Is there any other basis other than Judge McGraw's
10 findings in 2019?

11 A. I said yes.

12 Q. Okay. Well, then what are those other bases?

13 A. Their reports, their examinations of the --

14 Q. (Interrupting) Sorry. Go ahead. Go ahead.
15 Reports, examinations. What else?

16 A. And my review as a detective and a detective
17 commander, having read and understood these types
18 of reports, I found them very credible. And the
19 history of Gunnell's work, Welty's work and others
20 lacks the same level of credibility.

21 Q. What is it about Dan Gunnell's history of his work
22 that lacks credibility?

23 A. Well, as far as I can remember, Welty -- Welty
24 looks only at casings. The gun finally is sent

1 in and given to Gunnell. Gunnell does the
2 comparison. Someway or another Welty takes a look
3 as well, because the procedure is once you obtain
4 findings, get it -- have another examiner look at
5 it. That's also Peter -- let me --

6 Q. (Interrupting) Striupaitis?

7 A. Yeah, allegedly does that. But the -- and I read
8 Welty's deposition several times to try to
9 harmonize the -- this unusual transfer of physical
10 evidence that -- put in his hands, and then
11 eventually the Taurus gets there and it's
12 compared. I think when the testimony was offered
13 about the findings of Coleman and Murdock, it
14 appeared to me based on my readings and my
15 detective background they were far more credible
16 in terms of proficiency, expertise, diligence in
17 examination and things they considered to make the
18 match or not make the match. And I can -- and I
19 think Judge McGraw also saw it that way. I
20 understand why he would. I would be surprised
21 having read what I read that he would not. And he
22 did not. So that's the answer.

23 Q. And are you aware that Beth Patty -- do you know
24 who Beth Patty is?

1 A. I do.

2 Q. Are you aware that Beth Patty also disagreed with
3 Mr. Murdock's conclusions?

4 MS. HAGY: Objection. It
5 mischaracterizes evidence.

6 BY MR. BHAVE:

7 Q. Okay. Do you know who Russell McLain is?

8 A. As I sit here, I cannot recall Russell McLain.

9 Q. So do you --

10 A. (Interrupting) It's been a long day.

11 Q. Can you recall whether Russell McLain had ever
12 conducted an examination of the ballistics
13 evidence?

14 A. I -- I don't -- as I sit here? If you want to
15 show me a document, it might spark my memory. As
16 I said, it's been a long day. I just cannot
17 recall him.

18 Q. Okay. And then, Mr. Clark, you say in the next
19 sentence that Murdock and Coleman's examination
20 "concluded beyond doubt that the recovered Taurus
21 did not fire the bullets that killed Andrew." Do
22 you see that?

23 A. Yes.

24 Q. Is it true that your conclusion here is based

1 again on your determination that Murdock and
2 Coleman correctly analyzed the ballistics evidence
3 and everybody at ISP incorrectly examined the
4 ballistics evidence?

5 MS. HAGY: Objection, form,
6 mischaracterizes his prior testimony and the
7 evidence.

8 MR. BHAVE: Go ahead.

9 A. So the reason -- let me answer it this way: The
10 reason for a trial is to determine truth. And the
11 judge so found exactly what you just said, because
12 the implications are if this is not the murder
13 weapon -- which the judge found is not the murder
14 weapon -- then it can only be opined that there
15 was an incompetence at best, very significant,
16 resulting in the conviction and incarceration of
17 an individual for 20 years.

18 BY MR. BHAVE:

19 Q. Mr. Clark, in your experience, your wealth of
20 experience as a law enforcement officer, have you
21 ever been involved in a case where a judge or a
22 jury found a defendant not guilty but you believe
23 that may have been the incorrect result?

24 MS. HAGY: Objection, form.

1 A. Nothing that I was involved in as a law
2 enforcement officer.

3 BY MR. BHAVE:

4 Q. And you're aware that in 1994 a jury convicted
5 Patrick Pursley based in part on the ballistics
6 evidence, right?

7 A. Yes, I am.

8 Q. And so you would agree that that finding would
9 have been consistent with the truth?

10 MS. HAGY: Objection, form.

11 A. It's a twisted logic, and I disagree
12 wholeheartedly.

13 BY MR. BHAVE:

14 Q. And then if you look down two sentences after the
15 one we just discussed, you say, "This is
16 significant because it means Mr. Pursley was
17 convicted based on false information."

18 A. Yes.

19 Q. Did you -- by making that statement, do you mean
20 that Dan Gunnell's ballistics conclusions was
21 false information?

22 A. Yes.

23 MS. HAGY: Objection, form.

24 THE WITNESS: Should I answer it again?

1 BY MR. BHAVE:

2 Q. Could you explain why you believed Dan Gunnell's
3 ballistics examination was false information?

4 A. Because it was -- the gun was not the murder
5 weapon.

6 Q. And the gun was not the murder weapon, that
7 conclusion is based on the Court's finding,
8 correct?

9 A. And which is -- the foundation of the Court's
10 findings are Coleman and Murdock.

11 Q. All right. And then you say, "In fact, his Taurus
12 had no connection to the murder." If I was to ask
13 you the same questions, what is the foundation for
14 that conclusion, it would be the same answer as
15 the false information?

16 MS. HAGY: Objection, form.

17 A. Yes.

18 BY MR. BHAVE:

19 Q. And then the next sentence you say, "Accordingly,
20 the record evidence in this case was created as a
21 result of the RPD and ISP defendants's deviation
22 from the standard procedures," correct?

23 A. Yes.

24 Q. And then if you look at the first sentence of the

1 next paragraph, you say, "The ballistics evidence
2 in this case was created after the RPD and ISP
3 defendants deviated from standard procedures and
4 their own procedures in several ways," correct?

5 A. Yes.

6 Q. You did not review any of the procedures or
7 policy manuals of the Illinois State Police in
8 preparation of your expert report, correct?

9 MS. HAGY: Objection, form,
10 mischaracterizes his report.

11 A. This was not a state police investigation, so my
12 report does not address actions by the state
13 police.

14 BY MR. BHAVE:

15 Q. Do you have any opinion -- strike that. So is it
16 fair to say that you do not intend to opine on the
17 actions of the state police?

18 MS. HAGY: Objection, form,
19 mischaracterizes his report and his prior
20 testimony.

21 A. The state police were not involved in the
22 investigation, except for their lab. Is that what
23 you're -- I don't understand the question
24 otherwise.

1 BY MR. BHAVE:

2 Q. Do you understand that the state police lab, that
3 the lab is the state police?

4 A. They're not sworn, but, yes. I think I just told
5 you, the state police run a lab. They evaluate
6 evidence, physical evidence. They're not -- they
7 were not the investigators in this case.

8 Q. Okay. And so when you refer to their own
9 procedures in the first sentence of the last
10 paragraph on Page 25, whose own procedures are you
11 referring to?

12 A. In terms of the lab?

13 Q. Correct.

14 A. I talk about Welty a considerable extent and how
15 there was a requirement for him to not -- his lack
16 of formality taints his work on the -- looking at
17 the shell casings, and then it goes downhill from
18 there. It's in the report.

19 Q. And, Mr. Clark, I guess my first question was you
20 did not review any of the procedures or policy
21 manuals of the Illinois State Police, correct?

22 MS. HAGY: Objection, form,
23 mischaracterizes his report and prior testimony.

24 A. I guess --

- 1 BY MR. BHAVE:
- 2 Q. (Interrupting) Did you or did you not review the
- 3 Illinois State Police's policies and procedures?
- 4 A. Not their manuals.
- 5 Q. Okay. Did you review any policies and procedures
- 6 in written form of the Illinois State Police?
- 7 A. Not that I recall.
- 8 Q. Okay. And then if you can go to the next page,
- 9 Mr. Clark.
- 10 A. What page are we on?
- 11 Q. Twenty-six.
- 12 A. All right.
- 13 Q. If you look at the second full paragraph and
- 14 you look at the second sentence, you discuss,
- 15 "Dan Gunnell was the ISP examiner who compared the
- 16 Ascher bullets and the Taurus 9mm test fires,"
- 17 correct?
- 18 A. Yes.
- 19 Q. And then if you look at the third sentence, you
- 20 say, "He," referring to Dan Gunnell, "discussed
- 21 his findings with Jack Welty." You see that?
- 22 A. Yes.
- 23 Q. What are you basing that statement on?
- 24 A. Welty's deposition.

- 1 Q. Are you basing it on anything else?
- 2 A. Let me see. I have Genens's deposition cited
3 about Welty, but other than that I'd have to take
4 another look at that citation. Welty's own
5 deposition comments on it as well.
- 6 Q. And then in the next sentence after that, you
7 said, "From the ISP standpoint, Welty was the lead
8 ballistics analyst at the ISP lab in 1993, and
9 this was his case." You see that sentence?
- 10 A. That was supported by Genens's deposition at
11 Page -- starting on Page 101.
- 12 Q. And Genens is an ISP employee or a Rockford?
13 Rockford, right?
- 14 A. Rockford.
- 15 Q. And so is there any -- other than Genens's
16 deposition, is there any other support for the
17 finding that from ISP's standpoint Welty was the
18 lead ballistics analyst?
- 19 A. I can't remember if that -- Welty offers himself
20 as the most senior at the lab where he is. And --
21 and Gunnell was -- was rather new at that time,
22 say it that way. But Welty was apparently the --
23 I'll use the term go-to guy for the lab on
24 ballistics.

1 Q. And where are you finding that conclusion from,
2 where are you drawing that conclusion from?

3 A. Well, Welty says it himself in his deposition.

4 Q. Okay. And you said go-to guy at the lab for the
5 ballistics. Which lab are you talking about?

6 A. The one he was located at. I forget the name of
7 it, but it's where Forrester goes directly to him,
8 says, "Look, I need you have to take a quick look
9 at this."

10 Q. So that's the Rockford lab I think is what you're
11 referring to?

12 A. The Rockford lab, yeah. There's another one that
13 was larger.

14 Q. There are a number of labs, so would it be fair to
15 say that Welty was the go-to examiner at the
16 Rockford lab?

17 A. That's the way I understood it. That's what I
18 took out of the deposition.

19 MS. HAGY: Objection.

20 BY MR. BHAVE:

21 Q. And did you take anything out of the deposition
22 that indicated whether he was the go-to examiner
23 at any of the other ISP laboratories?

24 MS. HAGY: Objection, form.

1 A. Not in that context.

2 BY MR. BHAVE:

3 Q. And then, Mr. Clark, in the next sentence you say,
4 "According to Gunnell, Welty verified Gunnell's
5 results of a conclusive match between Samantha's
6 Taurus and the weapon used to shoot Andrew,"
7 correct?

8 A. Yes.

9 Q. What is the support for that conclusion?

10 A. The support is Welty's deposition, and it was --
11 it's also in the record that Peter Striupaitis --

12 Q. (Interrupting) Striupaitis.

13 A. (Continuing) -- Striupaitis also once Gunnell said
14 he had a match -- I don't know how physically he
15 did this. I'm assuming he went over to the bench
16 where it was and took a look and says, "Yeah. You
17 got it right." That's in the record.

18 Q. Correct. Peter Striupaitis's verification is in
19 the record, but what I'm asking you is where are
20 you getting the support that Welty verified
21 Gunnell's conclusions, and you said his
22 deposition, Welty's deposition. And so now my
23 question is is there any other support that you
24 were relying on to conclude that Welty verified

- 1 Gunnell's ballistics findings?
- 2 A. Just a minute. So there's a quote on Page 240 of
- 3 Welty's deposition. And that's a bad . . .
- 4 Q. What does that quote say on Page 240 of
- 5 Mr. Welty's deposition, Mr. Clark?
- 6 A. Pardon me?
- 7 Q. What does that quote say on Page 240 of
- 8 Mr. Welty's deposition?
- 9 A. That has to do with June 9. I want to find where
- 10 they got the gun and Gunnell looks at it and Welty
- 11 looks at it as well. And probably going to take
- 12 more time -- I'm willing to do it, find it in his
- 13 deposition. Just one minute here. I'd have to
- 14 use my computer to go through because there's no
- 15 index for this depo that I got. Okay. Page 192.
- 16 Q. Hold on. Let me get there. One ninety-two? Go
- 17 ahead. This is Welty's deposition?
- 18 A. Yeah.
- 19 Q. Go ahead.
- 20 A. No. That's not at all what I was looking for
- 21 either.
- 22 Q. Right.
- 23 A. This has to do -- he's talking about his
- 24 experience with Tauruses.

1 Q. Right.

2 A. And not the -- his verification of this Taurus
3 with Gunnell.

4 Q. Yeah. I'd like to know where you're finding in
5 Welty's deposition that Welty said that he
6 verified the -- Gunnell's findings in 1993. I
7 don't recall it, but you might, so let me know.

8 THE WITNESS: You want to have a break?
9 I'll do it.

10 MR. BHAVE: Sure.

11 THE WITNESS: All right. Let's --
12 let's see here. Wait a minute. Let's see if I
13 can do it this way. Let's see. It's Gunnell,
14 G-u-n-n-e-l (sic), I think. G-u-n-n-e-l . . .

15 MS. HAGY: While he's looking, can I
16 please ask the court reporter how much time we
17 have on the record.

18 (Discussion off the record.)

19 A. Here it is. Go to Page 169.

20 BY MR. BHAVE:

21 Q. Okay. I'm almost there.

22 A. This is the first.

23 Q. Go ahead.

24 A. Going to Page -- the first -- the page prior, it's

1 going to be 168. Quote, "Question: Okay. And
2 this has to do -- there's a forwarded message
3 requesting (sic) a post-conviction IBIS entry
4 court ruling, and the first," dash, "this is an
5 email. It starts out with the -- from
6 Brennan to Gunnell, and it says, 'Is this
7 something that concerns -- '" quote, "'As this is
8 something that concerns one of our own, you, I
9 haven't distributed it yet to the rest of the
10 section. Do you want to handle this with some
11 background or can I send it out to the masses as
12 is?'" And then Dan Gunnell replies, "Whatever you
13 wish. I made the original ID, and it was verified
14 by both Pete Striupaitis and then later by
15 Jack Welty. The case resulted in a conviction,"
16 close quote. "Do you have any idea why Gunnell
17 says that you verified this ID?" Okay. Now,
18 there's the start. If you want to plow some more
19 ground, we can do it, but that's the way I
20 remembered it.

21 Q. And then look down at the rest of it, Mr. Clark,
22 because he says at the end there at Line 20 to 23,
23 he says, "So, yeah, I'm confused by this because I
24 don't -- I don't know if it's accurate, but I

1 assure you I never did a verification on this --
2 on this case." Did you read that part of the
3 deposition?

4 A. Yes, I did. I have it in front of me.

5 Q. And so do you believe Jack Welty's lying when he
6 testified that he never did a verification in this
7 case?

8 MS. HAGY: Objection, form,
9 argumentative, mischaracterizes both the
10 deposition and Mr. Clark's prior testimony.

11 MR. BHAVE: Go ahead, Mr. Clark.

12 A. Well, we've got contrasting statements, and one is
13 written out. It is what it is.

14 BY MR. BHAVE:

15 Q. It's not is what it is. There's an email that
16 Mr. Welty did not author and Mr. Welty's sworn
17 testimony. Which one do you believe, Mr. Clark?

18 MS. HAGY: Objection, argumentative,
19 mischaracterizing the evidence.

20 A. If we go to the -- my Page 26 of my deposition --
21 my report, "In my opinion, it is unusual for an
22 analyst to hand evidence directly to another
23 analyst, especially if the second analyst did not
24 have any work to do on the evidence, such as an

1 examination. This handoff strongly indicates that
2 Welty was in communication with Gunnell about the
3 case and that Welty looked at the evidence, too,
4 either alongside or after Gunnell." Now, you have
5 to go to the paragraph before that. There are
6 documents of transfer, and it goes into Welty's
7 hands from Gunnell.

8 BY MR. BHAVE:

9 Q. Okay. That's not even remotely responsive to the
10 question that I asked.

11 A. Well, no. I think it's directly on point,
12 Counsel. I don't want to be argumentative, but
13 look at the paragraph before. It said, "According
14 to Gunnell, Welty verified Gunnell's results of a
15 conclusive match between Samantha's Taurus and the
16 weapon used to shoot Andrew. Gunnell returned the
17 evidence -- " here it is -- "directly back to
18 Welty rather than the evidence vault. Genens
19 testified that the submittal form returning
20 the evidence from Analyst Gunnell at the
21 Broadway (sic) Lab to Jack Welty was something he
22 had not seen in other cases." And I cite it.

23 Q. Okay. Thank you for --

24 A. (Interrupting) Wait. One more time. This

1 substantiates Gunnell's written response that we
2 just quoted. Welty looked at this.

3 Q. And so do you believe Dan Gunnell's email where he
4 stated, "Jack Welty verified my findings," or do
5 you believe Jack Welty's testimony under oath
6 where he said, "I never verified those findings"?

7 A. Well --

8 MS. HAGY: (Interrupting) Objection,
9 argumentative.

10 MR. BHAVE: Why is it argumentative?
11 I'm just asking what does he believe.

12 THE WITNESS: You're asking -- I
13 don't -- I don't believe anything. I believe -- I
14 believe what I see in the record, and the judge
15 apparently took a look at it, too. And there's a
16 direct conflict here. And unfortunately Gunnell's
17 had a stroke, but he wrote this lucid, and he was
18 an active, seasoned investigator. He recalled it,
19 and he said what he said. And that's stunning in
20 terms of later on Welty says, "Not me. I never
21 touched that after I looked at the shell casings."

22 BY MR. BHAVE:

23 Q. Did you find any other evidence in the record that
24 corroborates Jack Welty verified Dan Gunnell's

1 written findings in 1993?

2 A. The transfer document --

3 MS. HAGY: (Interrupting) Objection,
4 asked and answered.

5 MR. BHAVE: He's talking. Ms. Hagy,
6 please don't interrupt your witness.

7 Go ahead.

8 MS. KEEN: Objection.

9 MR. BHAVE: Go ahead.

10 THE WITNESS: He transferred documents
11 to Welty rather than the lab speaks to that
12 reality.

13 BY MR. BHAVE:

14 Q. Do you have any other evidence to support your
15 finding that Welty verified Dan Gunnell's
16 examination?

17 MS. HAGY: Objection, asked and
18 answered.

19 MR. BHAVE: It's not.

20 A. Nothing comes to mind in this late time of the
21 deposition. At this moment I can't recall
22 anything as I sit here.

23 BY MR. BHAVE:

24 Q. I can't as well. Okay. And then in the next

1 paragraph -- you read this to us, Mr. Clark, and
2 you said, "This handoff between Welty and Gunnell
3 strongly indicates Welty was in communication with
4 Gunnell about the case." But what are you basing
5 that -- what evidence are you basing that off of,
6 or is this just an inference that you're drawing?

7 MS. HAGY: Objection, asked and
8 answered, form.

9 A. You know, Counsel, if it was just a comment in the
10 ether that is not supported by anything physical.
11 We have a transmittal document that another
12 detective says, "I've never seen this" or "This
13 doesn't happen," yet it does when Gunnell in a
14 document written, part without, undeniable, from
15 Gunnell to Welty that the evidence goes to him.
16 Well, why is Welty if he's not going to take a
17 look, et cetera, why is Welty getting it?

18 BY MR. BHAVE:

19 Q. Well, let me ask you this: Do you think it might
20 be necessary to transfer the evidence from
21 Broadview, Illinois, to Rockford, Illinois,
22 because the prosecution is taking place in
23 Rockford, Illinois?

24 MS. HAGY: Objection, form.

1 MR. BHAVE: Okay.

2 A. It would be -- if that was the routine and rather
3 than going directly into the evidence and not back
4 to Welty, yes.

5 BY MR. BHAVE:

6 Q. Do you know where Broadview, Illinois, is,
7 Mr. Clark?

8 MS. HAGY: Objection, argumentative,
9 and this line of questioning is assuming facts
10 that aren't in evidence.

11 MR. BHAVE: I don't even know what that
12 means.

13 BY MR. BHAVE:

14 Q. Do you know where Broadview, Illinois, is in
15 relation to Rockford, Illinois?

16 A. No, but it's easily determined. I didn't think it
17 was essential for the report.

18 Q. No. That's fine. But you're aware that
19 Dan Gunnell conducted the ballistics examination
20 in 1993 in Broadview, Illinois, correct?

21 A. Yes.

22 Q. And you're aware that the murder and the
23 prosecution was taking place in Rockford, correct?

24 A. Right, where Welty was resided as an examiner.

1 Q. Correct. And so doesn't it make sense where after
2 Dan Gunnell's examination in 1993 -- after his
3 examination completes to send the evidence back to
4 Rockford?

5 MS. HAGY: Objection, calls for
6 speculation and mischaracterizing the evidence.

7 A. If it's where the evidence -- all the evidence for
8 the homicide is going to reside in an evidence
9 locker, yes, according to -- as I had written,
10 according to the proper procedure, but this one
11 was transferred to Welty.

12 BY MR. BHAVE:

13 Q. And are you aware of what the proper procedures
14 for handling of ballistics evidence is under the
15 Illinois State Police policies and procedures
16 manuals?

17 A. There was --

18 MS. HAGY: (Interrupting) Objection,
19 form.

20 THE WITNESS: There is a deposition on
21 that regard.

22 MR. BHAVE: I'll go ahead and strike
23 that question. I'll strike it, so there's no
24 question.

1 BY MR. BHAVE:

2 Q. Mr. Clark, you're not opining that there was some
3 mishandling of the evidence through its chain of
4 custody between the Illinois State Police
5 laboratories, are you?

6 MS. HAGY: Objection, form.

7 A. I would say the departure from the standard
8 procedure is mishandling.

9 BY MR. BHAVE:

10 Q. Are you aware that the parties have previously
11 stipulated that there was -- the chain of custody
12 was proper?

13 A. I saw the stipulation earlier in the deposition.
14 I think that's what you're referring to.

15 Q. Correct.

16 A. Well, that's a stipulation.

17 Q. It undercuts your criticism regarding the chain of
18 custody of those items?

19 MS. HAGY: Objection, form.

20 A. I'm very critical of any departure from the
21 standard method of transferring evidence.

22 BY MR. BHAVE:

23 Q. Now, Mr. Clark, I know that you have concluded
24 that the Illinois State Police's -- strike that.

1 You've concluded that Dan Gunnell's examination
2 was not correct; that's a fair -- at least a fair
3 statement, right?

4 MS. HAGY: Objection, asked and
5 answered.

6 A. Yes.

7 BY MR. BHAVE:

8 Q. Okay. Do you have any reason to believe that
9 Dan Gunnell intended to fabricate evidence in
10 1993?

11 MS. HAGY: Objection, asked and
12 answered, calls for a legal conclusion.

13 A. There's nothing in the record.

14 MR. BHAVE: That's all the questions I
15 have.

16 Thank you.

17 MR. POTTINGER: Mr. Clark, my name is
18 R.C. Pottinger. I'm a lawyer. I represent the
19 estate of Howard Forrester, David Ekedahl and
20 Gary Reffett.

21 I've got a few questions for you.
22 Hopefully we can get through this fairly quickly.

23 BY MR. POTTINGER:

24 Q. What was the audiovisual recording standards for

1 police interrogations of witnesses or suspects in
2 1993?

3 A. Record the statement.

4 Q. And what do you base that on?

5 A. The required diligence for detective
6 investigations.

7 Q. Okay. That's your opinion?

8 A. My opinion and experience, and it was -- it was
9 required by most agencies that I was aware of.

10 Q. Was it required by any agency in the state of
11 Illinois in 1993 to your knowledge?

12 A. I'm not aware.

13 Q. Was it required in any -- what states was it
14 required in 1993, your knowledge?

15 MS. HAGY: Objection, form.

16 A. I think there are agencies throughout the entire
17 United States in 1993 that required recordings.

18 BY MR. POTTINGER:

19 Q. Okay. What states?

20 A. Well, I bumped into --

21 Q. (Interrupting) Just say you don't know. What
22 states?

23 MS. HAGY: Objection.

24 A. Well, I know New York, California, Arizona,

1 Nevada, Utah. There are agencies in all those
2 states that -- in 1993.

3 BY MR. POTTINGER:

4 Q. That the state law required recording of
5 statements by suspects or witnesses in a criminal
6 investigation in those states would be your
7 opinion -- your testimony in 1993?

8 A. No.

9 MS. HAGY: Objection, form,
10 mischaracterizes his testimony.

11 MR. POTTINGER: Lindsay, I'm not going
12 to put up with it. Mischaracterizing testimony is
13 not a valid objection under the standing rule in
14 this district. Don't do it again.

15 MS. HAGY: I can't find that standing
16 rule. I'm going to make --

17 MR. POTTINGER: (Interrupting) Go
18 ahead, Mr. Clark.

19 MS. HAGY: I'm going to make my
20 objection, and I'm going to ask you to let him
21 answer.

22 MR. POTTINGER: Stop. Stop. You made
23 your objection.

24 MS. HAGY: You can't boss me around.

1 MR. POTTINGER: Mr. Clark, answer the
2 question.

3 THE WITNESS: Okay. So you added state
4 law required?

5 BY MR. POTTINGER:

6 Q. Yes.

7 MS. HAGY: And I'm going to object on
8 form and that this is mischaracterizing his prior
9 testimony.

10 I have a right to make that objection.

11 MR. POTTINGER: Go ahead and answer the
12 question.

13 A. So I'm not aware of any state law requirement in
14 any of the states I mentioned.

15 BY MR. POTTINGER:

16 Q. Okay.

17 A. Or any other state.

18 Q. So what do you base that standard on for the
19 states that you did mention?

20 A. The professional standard.

21 Q. What professional --

22 A. (Interrupting) Well, I cited O'Hara. I cited the
23 IACP Detectives' Investigations. It was a
24 standard procedure for proper investigative

1 procedures, especially in homicides, to record.

2 Q. Based on IA -- the Illinois Association of Chiefs
3 of Police or the International Association of
4 Chiefs of Police; is that correct?

5 A. I cited the book, their publication on detective
6 investigations.

7 Q. Have you been involved in a case in your
8 experience which that standard has been adopted by
9 a court of law, in any case you've been involved
10 in?

11 MS. HAGY: Objection, form.

12 A. No.

13 BY MR. POTTINGER:

14 Q. Thank you. I mean go ahead and answer if you want
15 to add.

16 A. The answer is no.

17 Q. No. Go ahead. Sorry.

18 A. I'm done. No.

19 Q. Okay. And you made this statement -- and I don't
20 want to beat this issue up. You said earlier in
21 the deposition -- you were asked about it
22 repeatedly, but I want to ask it again. You said
23 that's not a credibility statement, it's a
24 professional judgment in answer to many questions.

1 How are those two concepts different? And my
2 question is doesn't your rendering of what you
3 believe to be a professional judgment require you
4 to make credibility assessments?

5 MS. HAGY: Objection, form, asked and
6 answered, mischaracterizes his prior testimony.

7 MR. POTTINGER: I'm going to say this
8 one more time. Asked and answered under the
9 local -- under the rules that we're governing this
10 deposition -- I'm going to read it. It says,
11 "Asked and answered is not -- "

12 MS. HAGY: (Interrupting) I mean --

13 MR. POTTINGER: (Interrupting) I'm
14 going to read it to you and you're not going to
15 interrupt me.

16 "Asked and answered is not an
17 appropriate objection during depositions absent
18 truly abusive conduct in extraordinary cases."

19 You want to put that on the record, go
20 ahead.

21 MS. HAGY: What are you reading?

22 MR. POTTINGER: Mr. Clark, go ahead and
23 answer the question.

24 MS. HAGY: What are you reading from?

1 MR. POTTINGER: Reading from the
2 standing order regarding depositions in
3 United States District Court, Northern District of
4 Illinois.

5 MS. KEEN: Which judge, R.C., so we can
6 pull it up?

7 MR. POTTINGER: It's in the standing
8 order if you go to the Web site.

9 It would help us all. It would help us
10 all if we followed those rules, both sides.

11 MS. HAGY: But I mean --

12 MR. POTTINGER: (Interrupting) I'm not
13 getting into this debate. We can talk about it --

14 MS. HAGY: (Continuing) -- asked and
15 answered is important here. We're going through
16 the same things, and we only have about 20 minutes
17 left for this dep.

18 We can disagree, but you don't get to
19 control my answers. This is an adversarial
20 process.

21 MR. POTTINGER: Go ahead, Mr. Clark.

22 A. So as I recall, my answer is credibility is what
23 is the ultimate truth, the ultimate decision. And
24 what I've tried to express is what the indications

1 are based on my professional experience, that
2 which includes being a detective and weighing
3 the -- the likelihood of the statement itself.
4 So -- and I would agree that that -- that is a
5 flavor of credibility, but it's -- it's necessary
6 in order to be able to give an opinion. But I
7 want to make clear on the record -- and I'm
8 grateful for the opportunity again -- I'm not here
9 to determine what the jury's going to determine is
10 true.

11 BY MR. POTTINGER:

12 Q. Okay. That's your personal interpretation of the
13 evidence that's been presented to you; is that
14 correct?

15 A. No. It's not --

16 MS. HAGY: (Interrupting) Objection,
17 form.

18 THE WITNESS: It's not a personal --
19 it's not personal. It is professional, which is
20 different.

21 BY MR. POTTINGER:

22 Q. How is that different, how is your personal
23 opinion different from your professional opinion?

24 MS. HAGY: Objection.

1 A. Oh, you can ask me, "What do you believe as a
2 person?" And then of course the next -- and, "How
3 would it influence -- how did that influence this
4 report?" I think I'd be rather blunt. But I'm
5 trying to keep it based on a detective viewpoint
6 and a detective bureau commander's viewpoint and
7 going to Square 1, which is the murder itself and
8 taking the investigation through, comment there,
9 and of course as I said earlier, I understand the
10 ultimate finding 20 years later is this was not
11 the murder weapon.

12 BY MR. POTTINGER:

13 Q. Is your professional judgment an interpretation of
14 the evidence that this jury would hear if this
15 case were to go to trial?

16 A. Yes. I'd take great care to make sure they
17 understood this is a professional opinion based on
18 training and experience.

19 Q. So you were rendering professional interpretations
20 of evidence?

21 A. Yes.

22 Q. Is that correct, Mr. Clark?

23 A. You are correct.

24 Q. What methodology did you rely upon to establish

1 your opinions about the Rockford Police Department
2 policies, customs and practices in 1993 as it
3 relates to homicide investigations, if any?

4 A. I went to the expression of the professional
5 standard in the two volumes that I cited. They
6 are dated as published at that time, so that's
7 who -- I took care to go to that. There have been
8 subsequent publications or editions later on. And
9 I reflected on my experience in 1993, which was my
10 retirement year incidentally, and used that as my
11 basis.

12 Q. So in summary you used the two publications that
13 you've referenced earlier, along with your own
14 professional judgment based on your experience
15 with the Los Angeles County Sheriff's Department
16 in 1993, up through 1993?

17 MS. HAGY: Objection, form,
18 mischaracterizes testimony.

19 BY MR. POTTINGER:

20 Q. Is that fair?

21 A. In the context of the material provided, which
22 includes the depositions, et cetera.

23 Q. But the methodology you used was to rely on those
24 two publications as well as your professional

- 1 opinion; is that right?
- 2 A. I think that's fair, your global explanation.
- 3 Q. When Detective Forrester met with Liane Windham in
- 4 November of 1993, just so we're clear, he in fact
- 5 prepared a report, right?
- 6 A. When Windham met -- when Forrester met Windham?
- 7 Q. With Liane Windham, his wife, in the domestic
- 8 violence allegation.
- 9 A. Okay. And the question is?
- 10 Q. He prepared a report, correct?
- 11 A. He wrote a report, yes.
- 12 Q. And that was -- it's been produced in the case, so
- 13 it's presumably part of the records in your
- 14 professional judgment, correct?
- 15 A. Yes.
- 16 Q. Okay. What do you base your opinion on that
- 17 Forrester did not share that with the state's
- 18 attorney's office?
- 19 A. According to the record, he never brought it to
- 20 anybody's attention.
- 21 Q. According to what record?
- 22 A. The record given to me. There's no -- there's no
- 23 memorandum or report that this was routed -- this
- 24 report involving this key witness was routed to

1 the prosecution and the defense.

2 Q. So your -- the record that it wasn't done is
3 because you didn't see a memorandum that it was
4 routed?

5 MS. HAGY: Objection, form,
6 mischaracterizes his testimony.

7 BY MR. POTTINGER:

8 Q. Is that true?

9 A. Yes. Well, and I commented on it in the report,
10 so the report I think has a -- may have another
11 detail, but that's fundamentally it. It's a
12 Brady -- I put it in the context of Brady.

13 Q. I understand that you did that, but I'm asking
14 you what proof do you have that Forrester,
15 Howard Forrester, did not route that to the --
16 give that information to the state's attorney's
17 office, if any?

18 MS. HAGY: Objection, form.

19 A. The absence of any acknowledgment in the record
20 that that report went anywhere and was used as a
21 defense.

22 BY MR. POTTINGER:

23 Q. And was used as a defense. Thank you. And
24 when -- what do you know happened to the report?

1 MS. HAGY: Objection, form.

2 A. I do not know exactly what happened to the report.

3 BY MR. POTTINGER:

4 Q. You have no indication that Detective Forrester
5 would have intentionally not given this
6 information to the state's attorney's office,
7 correct?

8 MS. HAGY: Objection, calls for
9 speculation.

10 A. If you ask the question, I have no -- nothing in
11 the record that I saw.

12 BY MR. POTTINGER:

13 Q. You have no idea what Detective Forrester knew or
14 didn't know about Brady rules; is that correct?

15 MS. HAGY: Objection, form, calls for
16 speculation.

17 A. No.

18 BY MR. POTTINGER:

19 Q. You have no idea; that's correct?

20 A. Correct.

21 MS. HAGY: Objection, asked and
22 answered.

23 BY MR. POTTINGER:

24 Q. You contend that the preliminary examination of

1 the shell casings that Forrester provided to Welty
2 in June -- June 9, I believe, of 1993 was
3 improper; is that correct?

4 A. Yes.

5 Q. Why was that an improper investigative technique?

6 A. Because it should have been done immediately upon
7 retrieval of the -- of the -- of those items and
8 sent in to the lab for investigative leads.

9 Q. Okay. I understand that, for investigative leads,
10 but what about the specific inquiry that
11 Detective Forrester had of Mr. Welty as to whether
12 that -- those shell casings originated from a
13 particular gun?

14 A. Oh, I'm not at all critical of sending it in and
15 saying, "What can we learn from these?" I'm not
16 critical of that.

17 Q. I mean that's a very appropriate investigative
18 tool that would be following a lead, correct?

19 A. Yes. It's a key -- it's key evidence, and it
20 would give key information.

21 Q. Right. So, for instance, in this particular case
22 if Welty were to come back and say, "No. That was
23 fired from a Smith and Wesson" or "It was fired
24 from a Glock," that would have led to an exclusion

1 of at least that particular gun or that type of
2 gun as being a potential murder weapon, correct?

3 A. No. It would have been a possible exclusion, but
4 you'd still -- if -- any kind of gun that came
5 across the view of the investigation, the murder
6 investigation would be seized and examined.

7 Q. So but that preliminary -- requesting that a
8 ballistics division, whether in Illinois it's at
9 the Illinois State Police or perhaps internal in a
10 larger police department, is certainly an
11 appropriate investigative technique in your
12 professional judgment; is that correct, Mr. Clark?

13 MS. HAGY: Objection, form.

14 A. Yes.

15 BY MR. POTTINGER:

16 Q. Thank you. So is it your testimony that since
17 1965 when you took -- when you or officers under
18 your command and supervision from 1965 through
19 1993 took a statement on the street from a witness
20 or a potential witness or a potential suspect of a
21 crime, that they would have had to record that
22 statement or you would never use it?

23 MS. HAGY: Objection, form,
24 mischaracterizes his testimony.

1 A. No.

2 BY MR. POTTINGER:

3 Q. When do you -- when in your professional judgment
4 do you need to record that?

5 A. When you bring them to the station and you're
6 taking a statement on a major crime in particular,
7 and generally the implication's that coming to the
8 station to make a statement lends itself to the
9 recording.

10 Q. In 1993 what percentage of the police departments
11 in this country did that, in other words, always
12 recorded on a homicide case statements given by
13 suspects, potential suspects or witnesses when
14 they were at the station; do you have any idea?

15 A. I don't know the percentage.

16 Q. You have no idea?

17 A. No. I don't know the percentage. I've not seen
18 any study of it.

19 Q. You made the statement, and I think this directly
20 implicates Detective Forrester, that he would
21 write the report the way he wants. Do you
22 remember making that statement?

23 A. That -- that what?

24 Q. That you would be writing a report the way you

1 want. You believe that Detective Forrester and
2 others believed that Pursley committed this crime
3 and they wrote their reports in a fashion that
4 supported that conclusion; is that true?

5 MS. HAGY: Objection, form,
6 mischaracterizes his testimony.

7 MR. POTTINGER: Lindsay, please read
8 the rules after this deposition.

9 MS. HAGY: You're talking about
10 Judge Seeger's standing orders, and I don't agree
11 with your interpretation of them, and they don't
12 apply.

13 MR. POTTINGER: Go ahead, Mr. Clark.

14 A. So that's not what I said in the report. I said
15 when it's not done according to procedure, then
16 opportunities are present to move the -- change
17 the report or write a report reflective of where
18 you want it to go. And --

19 BY MR. POTTINGER:

20 Q. (Interrupting) Do you have -- Go ahead.

21 A. Sure. So it -- it gives an opportunity for the
22 report to be slanted rather than contemporaneous
23 reports that support a linear, straightforward
24 investigation that includes all possibilities

1 until they are dealt with.

2 Q. Okay. So the -- you believe that the process and
3 procedures, as I understand, by the Rockford
4 Police Department -- you believe that as they
5 existed provided an opportunity for officers to
6 either slant the -- I'm using your words -- slant
7 the report, move the report or change the report
8 the way they want, you believe that opportunity
9 existed within the process and procedures of the
10 Rockford Police Department in 1993; is that
11 correct, Mr. Clark?

12 A. I think the better term would be produce a report
13 that supports their suspicions.

14 Q. Okay. So let's be clear. Let's use your word
15 then. You believe that based on the processes and
16 procedures that existed in 1993, that there was an
17 opportunity to produce a report that was slanted
18 or changed to result -- get a result that the
19 officers or detectives want, that opportunity to
20 sway the processes and procedures existed; is that
21 correct?

22 A. Yes.

23 Q. What evidence do you have that in fact any officer
24 in this particular case did slant the report, move

1 the report, change the report to the way you
2 believe they wanted?

3 MS. HAGY: Objection, form.

4 MR. POTTINGER: What's your form
5 objection? Lindsay, what is your form objection?

6 MS. HAGY: That that was overbroad,
7 that it mischaracterizes the prior testimony, and
8 it calls for a legal conclusion.

9 MR. POTTINGER: All right. Let's
10 breach that stipulation.

11 So Mr. Clark would not be in a position
12 to render -- to answer that question because that
13 would be a legal conclusion that he'd be
14 prohibited from making. Is that your stipulation?

15 MS. HAGY: No. I'm not stipulating to
16 anything.

17 MR. POTTINGER: Okay. Go ahead,
18 Mr. Clark. You can answer the question.

19 A. As I recall the question -- then I'm going to ask
20 for a break -- the absence of proper procedure is
21 the fundamental commentary of my report.

22 BY MR. POTTINGER:

23 Q. Right.

24 A. And -- wait. And that absence provides the gaps

1 to just simply write a report that's focused on
2 one conclusion.

3 Q. Okay. Let's assume you're correct that there's
4 gaps or opportunities that exist in the procedures
5 that the Rockford Police Department used in 1993
6 to slant, move or change a report when it's --
7 let's assume that you're correct about that, that
8 there's gaps or opportunities. The question,
9 though, is did -- do you have any professional
10 judgment that in fact any of the officers in this
11 case did in fact slant, move or change the report
12 into a way that they wanted?

13 A. Let me take a look. I think it's addressed in the
14 report, but we -- so we want -- I'm going to
15 exclude the things they did not do and only the
16 things they did do. Is that in part of your
17 question?

18 Q. Why don't you answer the question the way you
19 understand it.

20 A. Okay. Well, that's the way I understand it, so
21 that's going to be the purpose. In considering
22 the question I think everything that you asked --
23 everything I'm looking at would be things they did
24 not do, which were -- obviously should have been

1 done. So until we get to the interrogation of
2 Crabtree, the things that were done to her were
3 things that were done, not omitted. That's
4 considerable. A lot of this is -- a lot of the
5 commentary, as I took your question, things they
6 did not do fits, and I'm going to exclude that
7 from the answer. So the coercion of Crabtree I
8 think is things they did as the answer to the
9 question.

10 Q. Maybe I asked that question poorly. Did any of
11 the officers slant, move or change a report; do
12 you have any evidence of that?

13 A. The evidence is in Crabtree's account of the
14 coercion, and so that's -- that's the evidence.

15 Q. So the only evidence would be what the comparison
16 would be between what the officers reported about
17 Crabtree's confession or statement as opposed to
18 what she ultimately said happened, correct?

19 A. Now -- and I'm trying to be precise. You said
20 what did, so I excluded what they did not do.
21 This is a direct infliction directed towards a
22 conviction.

23 Q. Okay. Sounds like the name of a song, infliction
24 towards --

1 A. (Interrupting) It did rhyme, but I didn't intend
2 it.

3 Q. What do you mean by that?

4 A. Infliction -- in answer to your question, this was
5 an infliction that led to an unjust conviction.

6 Q. Okay. I understand you have this opinion about
7 the coercion of Samantha Crabtree, but I just want
8 to -- then will you answer this question, move on.
9 Do you have any indication any officers, aside
10 from the Crabtree confession, slanted, moved or
11 changed a report in a fashion that they want; do
12 you have any evidence of that you've seen?

13 A. No. As you asked the question, no.

14 THE WITNESS: Can I take a break?

15 MR. POTTINGER: Sure. Five minutes.

16 We'll come back at 6:00 o'clock.

17 THE WITNESS: Five minutes would be a
18 blessing.

19 MR. POTTINGER: See you at
20 6:00 o'clock.

21 MS. KEEN: We have four minutes left
22 for this seven-hour deposition, and then we have
23 some questions that plaintiff is going to ask.

24 THE WITNESS: I need the break.

1 MS. KEEN: Oh, yeah. Of course, Roger,
2 take the break. That was just so Counsel is aware
3 we have -- this deposition -- defendants'
4 questions have to conclude in four minutes.

5 (A brief recess was taken.)

6 MR. POTTINGER: Just a couple real
7 quick questions.

8 BY MR. POTTINGER:

9 Q. Just in reviewing your report I want to make sure
10 I'm clear on this. You referenced obviously the
11 International Association of Chiefs of Police.
12 And you referenced another resource that would
13 have been applicable to your methodology in 1993,
14 but I didn't see that referenced in your report.
15 Can you tell me what that was? I think you gave
16 me an acronym for it, and I just wanted to --

17 A. (Interrupting) Yeah. That was -- that's a -- I'm
18 sorry. That -- because it's cited in the report.
19 This is called, "The Fundamentals of Criminal
20 Investigation, Fifth Edition, Second Printing, by
21 Charles E. O'Hara."

22 Q. And that was applicable in your opinion in 1993?

23 A. Right. They were the go-to publications. This is
24 the IACP Criminal Investigations. It's used -- it

1 was used then in most advanced degrees, this one
2 from master's level in -- criminal justice
3 master's level at Weaver College (indicating).

4 Q. I just want to understand the resource that you
5 used to make your professional judgments about
6 this case. You cited obviously the IACP. I
7 understand that. That's referenced in your
8 report, but also the Fundamentals of Criminal
9 Investigations by O'Hara. I just wonder if you
10 had a date, publication date for that.

11 A. Yeah. Let me give you that one. It's the Fifth
12 Edition, which was published in 1981.

13 Q. Okay.

14 A. Charles C. Thomas Publisher, Springfield,
15 Illinois.

16 MR. POTTINGER: Would it be possible
17 to -- it looks like -- I don't know if that would
18 still be in publication, if you could produce
19 that. Is that a problem, Lindsay?

20 MS. HAGY: Like the citation or like
21 the whole book?

22 MR. POTTINGER: The whole book just in
23 case it's not in publication anymore.

24 MS. HAGY: I mean I can. I have it,

1 but that will seem -- let's confer about that.
2 Because it's long. I have -- I'll show it to you.
3 It's super long.

4 MR. POTTINGER: Well, I think --

5 THE WITNESS: (Interrupting) Can order
6 it.

7 MR. POTTINGER: It's orderable?

8 We'll figure it out.

9 MS. HAGY: We ordered it.

10 MR. POTTINGER: Okay. No further
11 questions.

12 MS. HAGY: All right.

13 Thanks to Roger and to Andrea for
14 bearing with us this whole, long time.

15 I just have a few questions.

16 BY MS. HAGY:

17 Q. Mr. Clark, in your experience and expertise, is it
18 the responsibility of the detectives to evaluate
19 the reliability of a witness's testimony?

20 A. Yes.

21 Q. And is reliability different than credibility?

22 A. Yes, in terms of opining what the truth is or not.
23 There has to be some sort of evaluation.

24 Q. And is that something that a regular detective is

1 trained to do, to evaluate reliability?

2 MR. IASPARRO: Object to form.

3 A. Yes.

4 BY MS. HAGY:

5 Q. And I think at the very beginning of your
6 deposition, you had said that Windham gave
7 preliminary opinions on the casings. Am I correct
8 that you meant Welty gave the preliminary opinions
9 on the casings?

10 A. I thought I was saying Welty. Windham -- I know
11 who Windham is. He's the confidential informant,
12 so . . . No. It was Welty.

13 Q. Okay. And to render your report, did you evaluate
14 the activities of the detectives against the
15 applicable policing standards of 1993?

16 A. I did.

17 Q. And this report summarizes your findings and
18 opinions of comparing those standards to what
19 happened here?

20 A. Yes.

21 MR. IASPARRO: Objection to form,
22 foundation.

23 BY MS. HAGY:

24 Q. Sorry. Do you mind saying your answer again?

1 A. The answer is yes.

2 Q. Okay. Thank you. And I want to direct you to
3 Page 23 of your report. Okay. I need to look at
4 the -- do you see the second . . . Oh. So the
5 third paragraph that shows up there right
6 underneath the bold heading.

7 A. Yes.

8 Q. It says -- am I correct in saying that it says
9 that Detective Pirages, or Sergeant Pirages, was
10 present at the search --

11 A. (Interrupting) Yes.

12 Q. (Continuing) -- of the apartment? And did that
13 search in your opinion meet the standards of a
14 regular police investigation at that time?

15 MR. IASPARRO: Objection, form,
16 foundation.

17 MR. HUOTARI: Objection, form and
18 foundation.

19 (A brief interruption.)

20 MR. HUOTARI: I think that was both
21 Joel Huotari and Michael Iasparro.

22 MR. IASPARRO: Correct.

23 MS. HAGY: Did you catch that or should
24 I read that back?

1 THE WITNESS: (No response.)

2 MS. HAGY: Mr. Clark, did you catch
3 that question? Did you answer and I just missed
4 it?

5 THE WITNESS: I think I better hear it
6 read back.

7 MS HAGY: Would you mind reading that
8 question back, please.

9 (The pending question was read by the
10 court reporter.)

11 A. No.

12 BY MS. HAGY:

13 Q. And then I'm going to -- I think that I can just
14 share -- let's see. I think I need to be a host,
15 but let me see if that's correct. Okay. So I'm
16 going to -- we looked a little bit at Mr. Bruce's
17 deposition. And -- okay. And this is Page 95
18 of -- and I accidentally said Mr. Bruce. Sorry.
19 I meant to say Bruce Scott. Page 95. Do you see
20 where it says, "Do you remember ever getting
21 trained on what constituted a trick or to be
22 cajoled?"

23 A. I see it.

24 Q. What did he say?

1 A. "No."

2 Q. Okay. I think I'm wrapping up here.

3 MS. KEEN: You're still on screen
4 share.

5 MS. HAGY: Oh, sorry.

6 MS. KEEN: No. Just thought I'd remind
7 you.

8 BY MS. HAGY:

9 Q. Do you -- you testified about evidence being false
10 or fabricated or there was discussion of that
11 earlier.

12 MS. HAGY: Sorry. I'm just going to
13 mute myself for one second.

14 (A brief interruption.)

15 BY MS. HAGY:

16 Q. So am I right in understanding that your report
17 gives -- lists irregularities that could lend
18 themselves to evidence becoming false or
19 fabricated; am I understanding your opinion
20 correctly?

21 MR. IASPARRO: Objection to form and
22 foundation.

23 A. Yes.

24 MS. HAGY: I just need one more minute,

1 but I think we're wrapping up here.

2 BY MS. HAGY:

3 Q. When we were talking earlier about the --
4 Judge Kennedy giving the arrest warrant on -- I
5 believe it was COR and Getty 222, that was
6 Forrester's representation of what happened; am I
7 right?

8 MR. HUOTARI: Object to form.

9 A. Yes.

10 MS. HAGY: Just one second. I think
11 I'm done.

12 BY MS. HAGY:

13 Q. So I'm going to show you one more report, but I
14 just have to get it up here. We're going to be
15 going to the -- back to the report about the
16 Windhams.

17 MS. HAGY: Okay. Sorry about this.
18 I'll get it up in just a second.

19 MS. KEEN: Lindsay, would it help if I
20 screen share?

21 MS. HAGY: Yeah. Otherwise, I'm almost
22 on it. I'm sorry.

23 If you have it, why don't you just --
24 or otherwise I'm very close.

1 Okay. Thank you.

2 Oh, it went away.

3 Thank you.

4 MS. KEEN: Can you see the COR and
5 Getty report? Can you all see COR and Getty 1574?

6 MR. IASPARRO: Yes.

7 MR. HUOTARI: Yes.

8 MS. HAGY: Thank you, Roshna.

9 BY MS. HAGY:

10 Q. Mr. Clark, do you see where it says, "Liane stated
11 that she wanted Marvin arrested for battery. She
12 also wished to have him arrested for taking her
13 auto"?

14 A. Yes.

15 Q. And does that refresh your recollection on whether
16 she initially wanted Mr. Windham arrested?

17 A. Yes.

18 MS. HAGY: That's all my questions.

19 So I appreciate everybody's patience on
20 that.

21 MR. IASPARRO: Mr. Clark, I have one.

22 BY MR. IASPARRO:

23 Q. During Ms. Hagy's questions she asked you a couple
24 of questions relating to what she referred to as a

1 regular police investigation standard in 1993. Do
2 you recall those questions, sir?

3 A. Yes.

4 Q. Can you please tell me what a regular police
5 investigation means?

6 A. I commented -- I tried to set that stage and
7 create that foundation on Page 7. And I'll just
8 say bluntly the truth, the whole truth, and
9 nothing but the truth.

10 Q. Okay. Beyond that is there some document or
11 manual, publication I can look to that's going to
12 explain to me what a regular police investigation
13 was supposed to look like in 1993 in Rockford,
14 Illinois?

15 A. That was --

16 MS. HAGY: (Interrupting) Objection,
17 form, asked and answered.

18 THE WITNESS: That's the exact reason
19 why I cited the two volumes, O'Hara and the IACP.

20 BY MR. IASPARRO:

21 Q. Okay. So those would be the two publications, if
22 you will, that you're relying upon?

23 A. They're seminal, and I would agree.

24 MR. IASPARRO: Thank you.

1 Nothing further.

2 MS. HAGY: Anybody else?

3 MR. HUOTARI: None for me.

4 This is Joel speaking, and if nobody
5 else has any questions, I would just like to ask
6 Ms. D'Agnolo for a PDF of the transcript.

7 MR. POTTINGER: Same thing, Andrea.

8 MR. IASPARRO: For me, too.

9 Thank you.

10 THE WITNESS: You deserve a medal.

11 MS. HAGY: Yeah.

12 MR. BHAVE: This is Sunil Bhave with
13 the Illinois State Police defendants. We'd also
14 like to get a copy of the PDF transcript.

15 Thank you.

16 MR. POTTINGER: Everybody have a great
17 weekend.

18 THE WITNESS: Okay. Signing off.

19 MS. HAGY: Thank you, Andrea.

20 Thank you, Mr. Clark. Really
21 appreciate it.

22 MS. KEEN: Thank you, Mr. Clark.

23 (Whereupon, at 6:20 p.m. on October 8,
24 2021, the deposition was concluded.)

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ERRATA SHEET

DEPOSITION OF ROGER A. CLARK
(Taken October 8, 2021)

I, _____, do affirm
that I have read the foregoing transcript and have
found it to be a true and correct record of the
testimony given by me at the time of the taking of
the deposition. Otherwise, I have noted any and
all necessary corrections in the space provided
below.

Signed
Dated this ____ day of _____, 2021.

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CERTIFICATE OF SHORTHAND REPORTER

I, Andrea L. D'Agnolo, a Certified Shorthand Reporter and Notary Public in and for the State of Illinois, do certify that the deposition of Roger A. Clark was taken via Zoom videoconference on the 8th day of October, 2021, at 10:01 a.m.; that said witness was sworn to testify to the truth and nothing but the truth relative to said cause; that the deposition is a true and correct record of the testimony given by the witness; and that the reading and signing of the deposition were neither waived nor reserved.

Andrea L. D'Agnolo
Certified Shorthand Reporter

Dated this 23rd day of November, 2021.

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